

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2018

DELIVERED ON: 22.06.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.22746 & 31316 of 2013

and

Crl.M.P.Nos.1 & 2 of 2013

1. Rakhi Banerjee
2. Gopendra Kumar Banerjee
3. Anjana Gopendra Banerjee
4. Kaustava Gopendra Banerjee
5. Shantanu Banerjee

... Petitioners in
Crl.O.P.No.22746 of 2013

1. Sujit Das
2. Bijoybhattacharjee
3. Pranab Banerjee
4. Debajyoti Barun Chandra Hazra

... Petitioners in
Crl.O.P.No.31316 of 2015

Vs.

Subhankar Mukherjee

... Respondent in both
the Crl.O.P.s

Prayer in both Crl.O.Ps: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.8733 of 2007 pending on the file of the XIV Metropolitan Magistrate, Egmore and quash the same.

For Petitioners in both Crl.O.Ps : Mr.C.Rajan

For Respondent in both Crl.O.Ps : Mr.Arun Anbumani

ORDER

The petitioners in Crl.O.P.No.22741 of 2013 are arrayed as A1 to A5 and the petitioners in Crl.O.P.No.31316 of 2013 are arrayed as A6 to A9 in C.C.No.8733 of 2007 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai.

2. The respondent/complainant filed a private complaint in C.C.No.8733 of 2007 against the petitioners as well as the other accused before the XIV Metropolitan Magistrate, Egmore, Chennai for the alleged offences punishable under

Sections 494, 495, 496, 497, 406, 177, 182, 120B, 34, 109, 112 of Indian Penal Code.

3. The case of the respondent/complainant in C.C.No.8733 of 2007 is that though the first accused was already married to one Sujit Das on 24.08.2004 and an exparte decree of divorce between them was passed on 10.05.2005, the marriage between the complainant and the first accused was solemnized on 02.03.2005, which is during subsistence of the first marriage and that in fact, the earlier marriage of the first accused with the said Sujit Das was totally suppressed by all the accused with a criminal intention to deceive the complainant. According to him, the first accused also committed the offence of adultery and that all the accused individually and collectively committed the offences under Section 494, 495, 496, 497, 406, 177, 182, 120B, 34, 109, 112 of Indian Penal Code.

4. Mr.C.Rajan, learned counsel appearing for the petitioners contended that since the first marriage between the complainant and the first accused was annulled by a court of law, it has to be considered as though it is completely erased legally, and that it declares that the marriage never technically existed and was never valid. Therefore, he would contend that on the date of the 2nd marriage, there was no valid marriage and hence, the first accused cannot be prosecuted. It is also his contention that since there is an express bar under Section 195 of the Code of Criminal Procedure, the Metropolitan Magistrate should not have taken cognizance of the offences punishable under Section 177 and 182 Indian Penal Code. He would further contend that there are no averments in the complaint about the role played by the other accused for committing the offences as alleged by the respondent/complainant. He would therefore, contend that the entire proceedings in C.C.No.8733 of 2007 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai is liable to be quashed.

5. Per contra, Mr.Arun Anbumani, learned counsel appearing for the respondent/complainant would contend that the first marriage between the first accused and Sujit Das was solemnized on 24.08.2004 and the decree of divorce was passed only on 10.05.2005 and all the accused suppressed this fact and solemnized the marriage of the first accused and the respondent/complainant on 02.03.2005. He therefore, contended that all the accused are liable to be punished for the offences as mentioned in the complaint.

6. The petitioners have filed a xerox copy of a portion of the decree of divorce passed by the District Judge, Burdwan. A perusal of the said decree shows that the marriage between the first accused and Sujit Das was annulled under Section 25 of the Special Marriage Act 1954. Section 25 of the Special Marriage Act envisages that a marriage, which falls within the purview of Clause (1), (2) and (3) of the Section, shall be voidable and may be annulled by a decree of nullity. At this juncture, it is pertinent to point out that the date of passing of decree of divorce is not produced before this court. However, in the instant case, the specific allegation of the respondent/complainant is that all the accused suppressed the earlier marriage of the first accused with the said Sujit Das and solemnized their marriage on 02.03.2005 with a criminal intention to defraud him. When there are specific allegations in this regard, the proceedings initiated by the respondent/complainant cannot be quashed. However, as regards the offences under Section 177 and 182, there is an express bar under Section 195 of Code of Criminal procedure, which reads as under.

Section 195. No court shall take cognizance-

(a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

[ii] of any abetment of, or attempt to commit, such offence, or

[iii] of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

Therefore, the trial court is wrong in taking cognizance of the offence under Sections 177 and 182 IPC.

7. Apart from this, it is averred in the complaint that the first accused committed adultery and therefore, liable to be punished under Section 497 of Indian Penal Code. It is relevant to extract Section 497 of the Indian Penal Code

497 Adultery- Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punishable

with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

8. Since the first accused is a woman, she cannot be prosecuted for the offence under Section 497 of the Indian Penal Code and she cannot also be charged as an affector to the said offence. Therefore, the trial court has committed an error in taking cognizance of the offence under Section 497 of the Indian Penal Code as against the first accused.

9. Mr.Arun Anbumani, learned counsel appearing for the respondent/ complainant fairly conceded that the complaint can be quashed, as far as the offences punishable under Sections 177 and 182, as there is an express bar under Section 195 of Code of Criminal procedure. He would also contend that the first accused also cannot be prosecuted for the offence under Section 497 of the Indian Penal Code. It is his contention that as far as the other offences are concerned, it is a matter for trial and at this stage, this court cannot conduct a roving enquiry to find out whether the allegations are true or false.

10. In the facts and circumstances of the present case, I do not find any reason to quash the entire proceedings in C.C.No.8733 of 2007 on the file of XIV Metropolitan Magistrate, Egmore, Chennai. However, the offences under Sections 177, 182 and 497 of IPC cannot be proceeded with by the learned XIV Metropolitan Magistrate, Egmore, Chennai. Since the case is pending from the year 2007, the XIV Metropolitan Magistrate, Egmore, Chennai is directed to dispose of the same within a period of 6 months from the date of receipt of a copy of this order with regard to the other offences, un-influenced by any of the observations made by this court.

11. With the above observations, this Criminal Original Petition is dismissed. Consequently, connected criminal miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

mst

To

1. The XIV Metropolitan Magistrate,
Egmore, Chennai

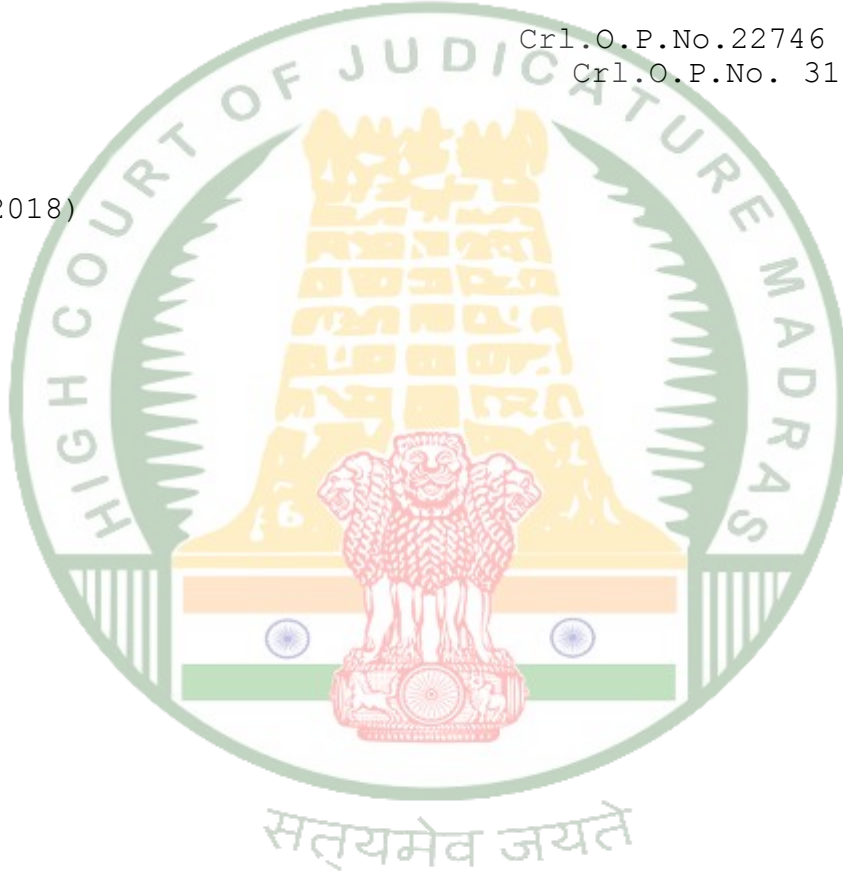
2. The Public Prosecutor,
Madras High Court.

+2 CCS to Mr.C. Rajan, Advocate sr 39423.

+2 Ccs to Mr. Arun Anbumani, Advocate sr 39634 & 39635.

Crl.O.P.No.22746 of 2013 &
Crl.O.P.No. 31316 of 2013

SP (28/06/2018)



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