

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.06.2017

Delivered on : 06.09.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.19649 of 2012 and
M.P.Nos.1/2012 & 1/2013

R.Chandran .. Petitioner

Vs

Venkatammal .. Respondent/Complainant

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.227 of 2011 on the file of the Judicial Magistrate No.1, Krishnagiri against the petitioner and his wife and quash the same.

For Petitioner : Mr.Swamidoss Manokaran

For Respondent : Mr.T.Panchatsaram

ORDER

This Criminal Original Petition has been filed by the petitioner to call for the records in C.C.No.227 of 2011 on the file of the Judicial Magistrate No.I, Krishnagiri, pending trial and quash the same.

2. Briefly stated case of the petitioner is as follows:

The petitioner married the respondent on 2.9.1971 at their young age and when the marriage took place, they were minors. From the wedlock, a daughter by name Valli was born on 23.10.1976. Thereafter, difference of opinion arose and the respondent left the petitioner and started living separately with the daughter.

3. According to the petitioner, the respondent left for middle east country to work as servant maid and she worked there for several years and thereafter, went to United States of America and there also she worked as house maid for several years. The respondent got her daughter Valli also married to a

relative and they were living separately.

4. Now after more than 30 years, the respondent filed a private complaint under Section 200 Cr.P.C. alleging that the petitioner had married the 2nd accused Dhanalakshmi while the first marriage of the petitioner with the respondent was subsisting and a case has been taken on file by the Judicial Magistrate No.I, Krishnagiri in C.C.No.227 of 2011, in which summon was received by the petitioner and also appeared before the trial Court.

5. According to the petitioner, in her complaint, the respondent had stated that she came to know the second marriage of the petitioner with the 2nd accused Dhanalakshmi only from the counter filed by the petitioner in M.C.No.23 of 2009 pending on the file of the learned Chief Judicial Magistrate, Krishnagiri. According to the petitioner, in order to save limitation aspect, the respondent had stated that she came to know the second marriage of the petitioner only from the counter filed by the petitioner in M.C.No.23 of 2009.

6. In M.C.No.23 of 2009, the respondent stated that after 15 years, the petitioner failed to take care of the respondent and the child and started living with another lady. Admittedly, the marriage between the petitioner and the respondent took place in the year 1976 and if 15 years was to be considered, then in the year 1991, the respondent was aware of the alleged second marriage, but she had filed the complaint in 2011, which is barred by limitation. Further, the allegations in the complaint are vague, baseless and without any proof. While so, the trial Court has erred in taking the complaint on file under Section 494 IPC without any material to substantiate the claim of the second marriage of the petitioner with Dhanalakshmi. Hence, prayed for quashing of C.C.No.227 of 2011 on the file of the learned Judicial Magistrate No.I, Krishnagiri.

7. The respondent has not filed the counter.

8. I heard Mr.S.Swamidoss Manokaran, learned counsel for the petitioner and Mr.T.Panchatsaram, learned counsel for the respondent and also perused the materials available on record.

9. It is admitted by both parties that the marriage between the petitioner and the respondent took place on 2.9.1971 and from the wedlock a daughter by name Valli was born on 23.10.1976. According to the petitioner, the marriage was solemnized between the petitioner and the respondent, when they were minors, is also evidenced from the age mentioned in the complaint filed by the respondent.

10. The main contention of the petitioner is that the complaint has been filed by the respondent after a long delay without any material to substantiate the claim of the second marriage of the petitioner with Dhanalakshmi. In support, the learned counsel for the petitioner relied upon the decision in Dr. Jayakumar @ Javid Kamal v. State, rep. by the Sub-Inspector of Police, reported in 2008 (1) MWN (Cr.) 241.

11. The respondent filed the private complaint against the petitioner alleging that while the marriage of the petitioner with the respondent was in force, without the knowledge of the respondent, the petitioner got married one Dhanalakshmi as second marriage and thus, he is liable to be punished under Section 494 IPC.

12. Section 494 IPC reads thus:

"494. Marrying again during lifetime of husband or wife - Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception-This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

Nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

13. The allegation of the respondent that without her knowledge, the petitioner married one Dhanalakshmi as his second wife is denied by the petitioner by stating that while the respondent was working in Saudi Arabia, she wrote a letter dated 16.4.1994 to the petitioner, in which she enquired about Dhanalakshmi and two children. This would establish the fact that even in the year 1994 itself, the respondent was aware of the fact that

the petitioner alleged to have been living with another lady. Therefore, the contention of the respondent that she came to know the second marriage only when the petitioner filed the counter in M.C.No.23 of 2009 is not correct.

14. In Dr.Jayakumar @ Javid Kamal v. State, rep. by the Sub-Inspector of Police, reported in 2008 (1) MWN (Cr.) 241, the learned Single Judge of this Court held as under:

"6. I have carefully considered the above said submissions made by the learned counsel on either side. At the outset, it has to be pointed out that a perusal of the Complaint lodged by the second respondent does not contain any averments constituting the ingredients for the commission of an offence under Section 494, IPC. As rightly contended by the learned counsel for the Petitioner that under the charge of Bigamy, if the evidence showed that the essential ceremonies have not been performed cannot justify the conviction even though admitted by the accused and that the prosecution must prove that the second marriage was duly performed in accordance with religious rites applicable to the form of marriage and admission by the accused in this respect cannot be made the basis of conviction. A perusal of the statement of witnesses recorded under Section 161 of the Criminal Procedure Code during the course of investigation also shows that the necessary averments constituting an offence under Section 494, IPC are conspicuously absent. The witnesses have simply stated that the Petitioner had admitted to the complainant that he had married Mumtaz. Such a statement alone cannot be the basis for framing a charge under Section 494, IPC. As laid down in the decision in Kanwal Ram v. Himachal Pradesh Administration, 1966 M.L.J. (Cr1.) 151 (SC) under the charge of Bigamy, if the evidence showed that the essential ceremonies have not been performed it cannot justify the conviction even though admitted by the accused. Here there is no such direct admission on the part of the Petitioner, but the second respondent in her statement had stated that as if the Petitioner had admitted the second marriage. Except that, there is absolutely no material to show that the second marriage was performed between the Petitioner and the said Mumtaz and curiously the first respondent has not filed any charge sheet against the said Mumtaz. The whole procedure that has been followed in this case is totally irregular and against the

provisions contained in Section 198 of the Criminal Procedure Code."

15. In the case on hand, the petitioner indirectly admitted that he was living with another lady. In paragraph 6 of the petition, the petitioner stated as under:

"6. The petitioner submits that the respondent, who was working as a House-maid in Saudi Arabia, wrote a letter dated 16.4.1994 to the Petitioner, in which she had enquired about Dhanalakshmi and the two children. This would clearly establish the fact that even in 1994, the Respondent was aware of the fact that the petitioner was allegedly living with another lady, that being the case, the present petition in 2011 is hopelessly time barred."

16. From the above, it is clear that even in the year 1994 itself the respondent was aware that the petitioner was living with another lady. However, the respondent initiated maintenance proceedings only in the year 2009. Therefore the contention of the respondent that only when the petitioner filed counter in M.C.No.23 of 2009 she came to be know the second marriage, cannot be accepted and the same has been stated by the respondent only to save the limitation to file the private complaint.

17. It is to be noted that the respondent has not taken steps all these years and it is seen that only during the year 2009, she had initiated maintenance proceedings and pending maintenance proceedings, she had filed the private complaint alleging bigamy. The aforesaid acts of the respondent would clearly show that all these years, she has not cared the petitioner and as rightly stated by the petitioner, she was living away with him. The complaint of the respondent is bereft of material particulars and filed with long delay and also there is no bona fide in the complaint. Nothing has been produced by the respondent to show that the respondent is entitled to file private complaint even after a considerable period of time.

18. It is apposite to mention that the parties have produced a certified copy of the decree passed in H.M.O.P.No.134 of 2013, dated 16.12.2015 on the file of the learned Principal Subordinate Judge, where from it is seen that, the petitioner had filed petition under Section 13(i-b) of the Hindu Marriage Act, 1955 for dissolution of the marriage between the petitioner and the respondent held on 2.9.1971 and the same was dismissed by the Court concerned. This Court do not want to elaborate upon the decree granted in H.M.O.P.No.134 of 20013, as this Court is concerned with only the private complaint lodged by the

respondent before the learned Judicial Magistrate No.I, Krishnagiri and the parties can work out their remedy in the manner known to law.

19. This Court is of the view that there is absolutely no material to show that there was bona fide in the complaint and the same is hopelessly barred. Therefore, this Court finds that continuing the criminal proceedings based upon the complaint of the petitioner is not fair and thus, C.C.No.227 of 2011 is liable to be quashed.

20. In the result, this Criminal Original Petition is allowed. The complaint in C.C.No.227 of 2011 on the file of the learned Judicial Magistrate No.I, Krishnagiri is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate No.I,
Krishnagiri.

+1cc to Mr.S.Swamidoss Manokaran, Advocate SR.No.61509

+1cc to Mr.T.Pachatsaram, Advocate SR.No.62237

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CRL.OP.No.19649 of 2012 and
M.P.Nos.1/2012 & 1/2013

GMV (16/10/2018)

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