



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2018

CORAM:

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THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P.(MD)No.2683 of 2018

Anbu Ammal

... Petitioner

-vs-

1. The Superintendent of Police,
O/o.The Superintendent of Police,
Madurai District.

2. The Inspector of Police,
All Women Police Station,
Usilampatti, Madurai District.

3.K.P.S.Thamarai Selvan

... Respondents

(R3 impleaded as per order of this Court made in Crl.MP(MD)
No.1582 of 2018 in Crl.OP.(MD)No.2683 of 2018 dated
08.03.2018)

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to direct the 2nd respondent police to register a case against the proposed accused based on the petitioner's complaint dated 22.01.2018.

For Petitioner : Mr.D.S.Haroon Rasheed
For RR 1 & 2 : Mr.Prabhu Ramachandran
Government Advocate (Crl.Side)

For 3rd Respondent : Mr.S.Bharathi

ORDER

This Criminal Original Petition has been filed to direct the respondents 1 and 2 to register a case based on the complaint given by the petitioner dated 22.01.2018.

2.The learned counsel appearing for the petitioner has submitted that the petitioner got married one Tamarai @ Tamaraiselvan as per Christian rites and Customs on 28.08.1998. He further submitted that the said Tamarai @ Tamaraiselvan has filed a Divorce Petition in IDOP.No.4 of 2011 on the file of the learned



First Additional District Judge, Madurai and the same was dismissed on 08.10.2015, against which, the said Tamarai @ Tamaraiselvan has preferred an appeal in C.M.A.(MD)No.1372 of 2015 before this Court and the same was allowed on 17.11.2017. He further submitted that immediately, the petitioner has filed a copy application and the copy was granted on 09.01.2018 and the petitioner is intended to file an appeal before the Hon'ble Apex Court. The petitioner is having 90 days of limitation and before expiry of the said period, the petitioner's husband namely Tamarai @ Tamaraiselvan got married another lady on 22.01.2018. He further submitted that the petitioner's husband has committed offences under Sections 494, 406 and 420 of IPC and hence, the petitioner has lodged a complaint before the second respondent on 22.01.2018, but so far, no action has been taken.

3.The learned Government Advocate (Crl.Side) appearing for the respondents has submitted that after receipt of the complaint enquiry was conducted and the same was closed on 22.01.2018, it self.

4.The learned counsel appearing for the third respondent has submitted that as per the complaint, the petitioner's husband namely Tamarai @ Tamaraiselvan has married another lady on 22.01.2018. But, actually no such marriage took place. He further submitted that the offence under Section 494 of IPC., is non cognizable one and the police has no power to register a case.

5.Though the petitioner has stated in the petition that the proposed accused namely Tamarai @ Tamaraiselvan has committed offences punishable under Sections 494, 406 and 420 of IPC, the complaint dated 23.01.2018, which has been enclosed in the typed set filed by the petitioner does not disclose any offence with regard to the offence under Sections 406 and 420 of IPC. In the said complaint, the petitioner has stated that her husband has married another lady, before expiry of the appeal period. Even assuming that the petitioner's husband has married another lady and the said act will attract the Section 494 IPC.

6.At this juncture, it would be relevant to refer to Section 198 Cr.P.C, which reads as follows:

"No court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence"

7.The offence under Section 494 of IPC comes under Chapter XX of IPC. So, in respect of an offence punishable under Section 494 of IPC., the Court shall not take cognizance except upon a complaint by the aggrieved person. Hence, the police can not be register a case. If the petitioner feels that she is aggrieved, she can file a complaint before the concerned Court.



8. With the aforesaid observations, this Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar (CS-I)

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/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
O/o. The Superintendent of Police,
Madurai District.
2. The Inspector of Police,
All Women Police Station,
Usilampatti, Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr. D. S. Haroon Rasheed, Advocate in SR No. 54478
+ 1 cc TO Mr. S. Bharathi, Advocate in SR No. 53801

das
AE/JC/SAR2/23.04.2018/3P/6C

CRL.O.P. (MD) No. 2683 of 2018
08.03.2018