

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 24.04.2018****CORAM:****THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN****Cr1.O.P. (MD) .No.18929 of 2013****and****M.P (MD) .Nos.1 and 2 of 2013**

1.Ananthapandian ... First Petitioner/Accused No.1
2.Thavasi Thevar
3.Vijaya
4.Mallika ... Petitioners 2 to 4/Accused No.3 to 5

Vs.

1. State represented by
The Sub-Inspector of Police,
All Women Police Station,
Uthamapalayam, Theni District. ...First Respondent/
Complainant

2.Santhiya ...2nd Respondent/De facto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the Calendar Case in C.C.No.351 of 2011 on the file of the learned Judicial Magistrate, Uthamapalayam and quash the same as illegal.

For Petitioners : Mr.R.R.Kannan

For R-1 : Mr.A.Robinson,
Government Advocate (Cr1.Side).

For R-2 : Mr.G.Ahilarajan
[No appearance]

O R D E R

The petitioners have filed this criminal original petition for quashing the calendar case in C.C.No.351 of 2011, on the file of the learned Judicial Magistrate, Uthamapalayam.

2.The *de facto* complainant in this case is one Santhiya and she has been arrayed as second respondent herein. She has been served and counsel has also entered appearance on her behalf, but they are not present today.



3. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Criminal side) appearing for the first respondent.

4. It is seen that the *de facto* complainant had filed H.M.O.P.No.141 of 2010 on the file of the Sub Court, Uthamapalayam and obtained a decree, nullifying her marriage with the first petitioner herein. Subsequently, the first petitioner herein preferred an interlocutory application for setting aside the said *ex parte* decree made in H.M.O.P.No.141 of 2010 on 21.07.2011. The said application was dismissed on 16.08.2012. The learned Trial Judge, while dismissing the said I.A.No.91 of 2011 filed by the first petitioner herein, referred to the averments made by the *de facto* complainant that she had contracted fresh marriage and that she had got children also through the said marriage. The petitioners are charged with the offence under Section 498 (A) IPC.

5. As per Section 498 (A) IPC, a person can be charged with the said offence, only if he is the husband or blood relative of the husband of the *de facto* complainant. In this case, the *de facto* complainant had already obtained a declaratory decree to the effect that the first petitioner herein is not her husband. Therefore, the very foundation under Section 498(A) IPC, goes.

6. This Court, taking note of the subsequent development, namely, the second marriage of the *de facto* complainant and birth of children through the second marriage, is of the view that continuation of the impugned prosecution, would only amount to abuse of legal process. Hence, the impugned proceedings in C.C.No.351 of 2011 on the file of learned Judicial Magistrate, Uthamapalayam, in respect of the petitioners, is quashed and the Criminal Original Petition is allowed. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Uthamapalayam.

2. The Sub-Inspector of Police,
All Women Police Station,
Ettimadai, Theni District.



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.RR.KANNAN ,Advocate in SR.No. 63134

Cp

AE/JC/SAR3/17.05.2018/3P/5C

ORDER MADE IN
CrI.O.P. (MD) .No.18929 of 2013
and
M.P (MD) .Nos.1 and 2 of 2013
24.04.2018