



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 23.03.2018

ORDER PRONOUNCED ON : 23.04.2018

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Cr1.O.P.No.2859 of 2013
and M.P.No.1 of 2013

1. John Peter
2. Jakkulin Jiji
3. Dhas
4. Devadashan

... Petitioners

Vs.

1. State rep. by
The Inspector of Police,
All Woman Police Station,
Kuzhithurai,
Kanyakumari District,
(Crime No.13/2012)

2. T.Ramani

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to C.C.No.471 of 2012 on the file of the Judicial Magistrate, Padmanabhapuram and to quash the same.

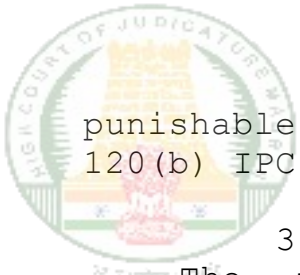
For Petitioners : Mr.A.Balakrishnan for
Mr.K.P.Narayana Kumar

For Respondents : Mr.A.Robinson,
Govt. Advocate (Cr1.side) for R1
M/s.L.Victoria Gowri for R2

ORDER

The petitioners 1 to 4 herein are the accused in C.C.No.471 of 2012 on the file of Judicial Magistrate, Padmanabhapuram. This criminal original petition has been filed by the petitioners to call for the records pertaining to C.C.No.471 of 2012 on the file of Judicial Magistrate, Padmanabhapuram and to quash the same as illegal.

2. The de-facto complainant was added as second respondent in the criminal original petition. In the said case the first respondent police has filed a final report for the offences

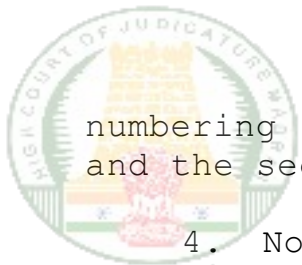


punishable under Sections 498(A), 420, 493, 494, 496, 406, 403 & 120(b) IPC against the petitioners.

3. The gist of the final report is as follows:-

The first petitioner is the husband of the de-facto complainant. The second petitioner is the second wife of the first petitioner, third petitioner is the father of the second petitioner and the fourth petitioner being the third party arranged the marriage between the first and the second petitioners. The marriage between the first petitioner and the de-facto complainant was solemnised on 14.05.2003 at Kaspas Sabai Church, Neyyor as per Christian rites. During the time of betrothal which was held on 28.04.2003, the de-facto complainant gave golden bracelet and a gold chain weighing about 2.4 sovereign and 3.4 sovereign respectively to the first petitioner. Further on behalf of the de-facto complainant Rs.1,25,000/- was given as a dowry. More over during the time of marriage the de-facto complainant was provided with 19 sovereigns of gold by her parents. After one month from the date of marriage, with the consent of the first petitioner, the de-facto complainant went to Malaysia and worked as a Nurse. Thereafter, in order to study computer course, she sent Rs.25,000/- to the first petitioner and subsequently the first petitioner was employed in Malaysia for certain period. On 06.11.2005, the de-facto complainant gave birth to a female child and afterwards during the year of 2001 to 2007 the earnings of the second respondent/defacto complainant to the tune of Rs.5 lakhs had been transferred to the account of the first petitioner maintained in ICICI Bank. The said amount was taken away by the first petitioner by using ATM card and the entire amount was spent by him. Further more in the year 2009 after came from Malaysia the first petitioner ill treated the second respondent/defacto complainant and driven her away from the matrimonial home. Further he refused to return the jewels which was given by the de-facto complainant at the time of their marriage. More over the first petitioner/husband filed a petition in I.A.No.69 of 2011 in IDOP No.67 of 2009 before District Court, Nagercoil for the relief of dissolving the marriage. In the summons which was issued by the Court the first petitioner fraudulently obtained the signature of the second respondent/defacto complainant without mentioning the contents of the summons. Thereby ex parte order was passed and subsequently the marriage between the first petitioner and the second respondent was dissolved. After getting the ex parte order of divorce, the first and the second petitioners marriage was arranged by the fourth petitioner and solemnised on 14.09.2011. Thereafter the second respondent/defacto complainant lodged a complaint before the first respondent police and there after completing investigation charge sheet has been filed against the petitioners

<https://hcservices.echus.gov.in/services/> punishable under Sections 498(A), 420, 493, 494, 496, 406, 403, 120(b) of IPC against which the petitioners herein have filed this petition to quash the charge sheet. After



numbering this petition notice was properly served to the first and the second respondents.

4. Now, in order to substantiate the claim made by the petitioners through this petition, the learned counsel appearing for the petitioners would submit that only after satisfied with the exparte decree of divorce with regard to the marriage solemnised between the first petitioner and the second respondent granted on 02.07.2009, the first petitioner married the second petitioner on 14.09.2011. So, on the said date (i.e., 02.07.2009), there is no matrimonial relationship between the first petitioner and the second respondent/defacto complainant, thereby, the offence under Section 494 would not be attracted against the first and the second petitioners. Further, he contended that only after solemnising of the second marriage, the second respondent lodged the complaint before the first respondent police on 01.05.2012. More over in the year of 2009 itself, the second respondent left the matrimonial house and subsequently in the year 2012, she lodged the complaint against the petitioners is nothing but abuse of process of law. Accordingly charge sheet filed against the petitioners by the respondent police is liable to be quashed.

5. On the other hand, the learned counsel appearing for the second respondent/defacto complainant contended that at the time of solemnising the second marriage, the application for setting aside the exparte decree was filed by the second respondent is pending with the Court. So only after knowing the details with regard to the filing of the application the first petitioner intentionally married the second petitioner with the help of other petitioners.

6. Now, on going through the copy of the petition filed by the 2nd respondent before the District Court, Nagercoil it appears that the said application was filed on 20.09.2010 itself. So after granting exparte decree of divorce within a period of limitation, the second respondent has not filed any application for setting aside the exparte decree. So on the date of the second marriage happened between the first and the second petitioners, the earlier marriage happened between the first petitioner and the second respondent/defacto complaint is not in subsisting. Thereby, this Court cannot come to the conclusion that the marriage between the first petitioner and the second respondent shall be void.

7. The learned counsel appearing for the second respondent relied upon the judgment of the Hon'ble Rajasthan High Court, **reported in II (2015) DMC 648 (DB) (Raj.) in the case of Shilpa Vs. Kuldeep Singh Gehlot** and made a submission that if the marriage is happened before the completion of appeal time it would not destruct the right of the party who suffers the life. In the said judgment, it was held in paragraph no. 36 as under.

summon

reported in (2011) 12 Supreme Court Cases 319 in the case of Ajay Kumar Das vs. State of Jharkhand and another our Hon'ble Apex

<https://hcservices.ecourts.gov.in/hcservices/>



9. Accordingly, now following the judgment of our Hon'ble Apex Court, this Court is also of the considered view that this is not a case in which the alleged charge sheet filed by the first respondent indicates any abuse of process of law. Thereby the grounds raised by the petitioners in order to quash the charge sheet is not having any merit. Accordingly the criminal original petition stand dismissed. Connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate,
Padmanabhapuram.

+1 cc to M/S.K.P.Narayanakumar, Advocate IN SR No.63228
+1 cc to M/S.L.Victoria Gowri, Advocate IN SR No.63259

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and M.P.No.1 of 2013
23.04.2018

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