

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.25725 of 2008
and
M.P.No.1 of 2008

[Orders Reserved on 23.08.2018]

1.Dr.Mohammed Sherrif
2.Mrs.Mary Sheeba Yovan Petitioners / Accused

Vs.

1. State Rep.by
Inspector of Police,
W-23, All Women Police Station,
Royapettah,
Chennai 600 014 1st Respondent / 1st Respondent
2.K.Devadhas
3.Mariyam Sherin ... Respondent 2 & 3 / Proposed
Respondents

*(R2 & R3) impleaded vide
orders dated 20/3/12 & 09.03.2017.

PRAYER: Petition is filed under Section 482 of Criminal Procedure Code, praying to call for records relating to the Charge Sheet in C.C.No.1695 of 2006, on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai, quash the same.

For Petitioners : Mr.V.Selvaraj

For Respondent-1 : Ms.Saratha Devi,
Government Advocate (crl.side)

For Respondents : No Appearance
(R2 & R3)

ORDER

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.1695 of 2006, on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai.

2. The learned counsel appearing for the petitioner would submit that The 2nd petitioner married the 1st petitioner during the subsistence of her marriage with the defacto complainant/second respondent herein and therefore, the 1st petitioner is guilty of committing offences under Sections 494 & 497 IPC. He would further submit that the defacto complainant / 2nd respondent herein had spent considerable amount to the 2nd petitioner for her visit to abroad. The learned counsel, in support of his contentions, has relied on a Judgment of Hon'ble Supreme Court in Ajay Agarwal Vs. Union of India reported in (AIR 1993 SC 1637).

3. Though there is no appearance on behalf of the 2nd and 3rd respondents herein. Keeping pending the above case, which is of nearly 10 years old, would only compound to pending of the case without any progress. Hence, the matter is taken up for disposal, on merits, with the materials available.

4. On perusal of the materials it is seen that the 2nd petitioner married the defacto complainant on 23.02.1998, at Rosary Mary Church, Kancherakoodu. Only after the marriage, the 2nd petitioner came to know that the defacto complainant / second respondent was already married and that she was cheated. The defacto complainant married one Sinduja and they have a son by name Jebin. The marriage between the 2nd petitioner and the defacto complainant is nullity. After lodging the complaint, the 2nd petitioner filed a petition seeking divorce and obtained a decree for divorce.

5. According to the 3rd respondent / the first wife of the 1st petitioner / Mariyam Sherin,, the 1st petitioner / husband had ill-treated her while she was in abroad and therefore, a case has been registered against him for the offences under Sections 498A, 325 and 506(ii) IPC.

6. The learned Government Advocate (crl.side) appearing for the State would submit that based on the complaint given by the defacto complainant, an investigation was conducted and charge sheet has been filed before the concerned Court and is pending.

7. I have heard the learned counsels appearing on either side and perused the materials available on record.

8. It is seen that in this case sofar seven witnesses have been examined and 14 exhibits have been marked and the trial is in the final stage. At this stage, the contention of the petitioners that the offence has been committed outside India and therefore, previous sanction of Central Government have to be obtained, is not acceptable, in view of the evidence available, it is seen that it is continuing offence. No doubt, a part of the offence has been committed outside India. As per Section 178 of Cr.P.C., the trial Court has got jurisdiction to try the case. The Judgment of the Supreme Court reported in (AIR 1993 SC 1637) (cited supra) is not applicable to the facts of the present case.

9. On going through the evidence it is seen that none of the witnesses have been cross-examined and the petitioners plea that they may be permitted to file necessary application to recall the witnesses and to purforth their case, otherwise deprivation of their valuable rights would cause great prejudice to them, is to be considered by the trial Court.

10. With the above observations, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

MPK
To

1.The XVII Metropolitan Magistrate Court,
Saidapet, Chennai, सत्यमेव जयते

2.Inspector of Police,
W-23, All Women Police Station,
Royapettah,
Chennai 600 014

3.Public Prosecutor,
Madras High Court,
Madras.

Cr1.O.P.No.25725 of 2008

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srg 20/02/2019