

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.05.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.755 of 2016 and
CrI.M.P.No.355 of 2016

1.P.Maheshwari
2.M.Pongkali
3.P.Shanthi
4.P.Sathish Kumar
5.M.Palanisamy
6.M.Periya Pappa
7.Muthu
8.K.Parameshwaran ... Petitioners/A1 to 8

Vs.

1.State by Inspector of Police,
Alagapuram Police Station,
Salem District ...1st Respondent/Complainant
2.Manikandan ...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records and quash the charge sheet in C.C.No.61 of 2015 pending on the file of the learned Judicial Magistrate No.5, Salem District.

For Petitioners : M/s.Karan and Uday

For Respondents

For R1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

For R2 : Mr.M.Ravi

ORDER

This petition has been filed to quash the proceedings in C.C.No.61 of 2015 on the file of the learned Judicial Magistrate-V, Salem.

2. The learned counsel for the petitioner submitted that there are totally nine accused in which the petitioners are arrayed as 1 to 8. The case against the ninth accused was split up. The first petitioner is the wife of the second respondent

defacto complainant. The petitioners 2 to 4 are the in-laws of the second respondent and petitioners 5 to 8 are the relatives of the first petitioner. On the private complaint filed by the second respondent forwarded under Section 156(3) Cr.P.C. and crime has been registered in Crime No.389 of 2014 by the first respondent for the offences under Sections 120(b), 420 I.P.C. After completion of investigation, the first respondent filed final report for the offences under Section 495, 120(b), 420 I.P.C. and the same has been taken cognizance in C.C.No.61 of 2015. The crux of the allegation is that the first petitioner got married with the second respondent on 26.11.2012. While being so, at the time of Seemantham of the first petitioner, the second respondent and his family members came to understand that the first petitioner was already got married with one, Alagesan and suppressing the said earlier marriage, the first petitioner along with the other accused persons conspired together and solemnized the marriage with the second respondent.

3. The learned counsel for the petitioner further submitted that the marriage between the petitioner and the said Alagesan happened in the accidental manner and thereafter immediately the first petitioner filed divorce petition in M.C.O.P.No.25 of 2011 and it was decreed in her favour and declared that the marriage took place between the first petitioner with the Alagesan was null and void by the decree dated 06.07.2012. When the second respondent approached the petitioner's family the said fact categorically disclosed to the second respondent and his family members also produced the decree of divorce. Only thereafter the second respondent and his family members convinced and agreed for marriage.

4. He further submitted that the offence under Section 495 I.P.C. would not at all attract as against the petitioners, since the first petitioner got divorce in F.C.O.P.No.25 of 2011 on the file of the Family Court, Salem. Further so far as the other offences are concerned, there is absolutely no conspiracy and the decree of divorce disclosed to the second respondent and his family members and as such the petitioners never induced the second respondent or his family members to deliver any of the property. Therefore, offences under Section 420 I.P.C. also not attracted as against the petitioner and prayed for quashment of the entire proceedings in C.C.No.61 of 2015.

5. Per contra, the learned counsel for the second respondent submitted that the second respondent is the husband of the first petitioner herein. The second respondent and his family members came to understand that the first petitioner already got married with one, Alagesan. The first petitioner and her family members namely all the petitioners herein suppressed the said fact and got married with the second respondent. There are material

evidences to prove the charges as against the petitioners and as such he prayed for dismissal of this quash petition.

6. The learned Additional Public Prosecutor submitted that there are totally nine accused in which the petitioners are arrayed as A1 to A8. The ninth accused is absconded and the case has been split up as against him. After completion of investigation final report was filed and the same has been taken cognizance by the trial court for the offences under Sections 495, 120(b), 420 I.P.C. The first petitioner got married already with one, Alagesan on 29.10.2010 itself. Thereafter she suppressed the said fact along with the other accused persons with dishonest intention induced the second respondent and his family members and got married him. Further he submitted that there are material evidences to prove the charges as against the petitioners. Though the first petitioner got divorce from her first husband the petitioners are liable to be punished under Section 495 I.P.C. All the petitioners suppressed the said fact and cheated the second respondent by getting married with him. Therefore, he prayed for dismissal of this quash petition.

7. Heard the learned counsel for the petitioners, the learned counsel for the second respondent and the learned Additional Public Prosecutor appearing for the first respondent.

8. The petitioners are arrayed as A1 to A8. There are totally nine accused in which as against the ninth accused, the case has been split up. Insofar as the petitioners are concerned, they have been charged for the offences under Sections 495, 420 and 120(b) I.P.C. Admittedly, the first petitioner got married with one, Alagesan on 29.10.2010. Immediately she filed dissolution of marriage petition in F.C.O.P.No.25 of 2011 before the Family Court, Salem and the same was also decreed by the decree dated 06.07.2012. Thereafter, the first petitioner got married with the second respondent on 26.11.2012 at Prasanna Venkataramana Swamy Koil, China Thirupathi Village, Karuvalli Post, Salem District. She also conceived and after Seemantham festival, there are misunderstanding between the petitioner and the second respondent and as such they got separated within a period of one year from the date of their marriage. The second respondent filed divorce petition in F.C.O.P.No.517 of 2013 before the Family Court, Salem.

9. On perusal of the divorce petition filed by the second respondent, there is no whisper about the allegation of suppression of first marriage by the petitioners. There is no allegation about the adultery about the first petitioner. After filing divorce petition after a period of one year, the second respondent lodged the complaint alleging that the petitioners

suppressed the earlier marriage and got married with the second respondent thereby cheated the second respondent and his family members.

10. Admittedly, the first petitioner got divorce on 06.07.2012 and only thereafter she got married with the second respondent on 26.11.2012. Therefore, the offence under Section 495 would not attract as against the petitioners. It is relevant to extract the provision under Section 495 I.P.C. as follows:

"495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted -Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

According to the provision 494 I.P.C. exception -I, the offence would not attract if any person whose marriage with such husband or wife has been declared void by the court of competent jurisdiction. Therefore, the offence under Section 495 would not attract as against the petitioner.

11. Insofar as the offence under Section 420 concerned, there is a decree of divorce obtained by the first petitioner. According to the petitioners, the said fact categorically was disclosed to the second respondent and his family members and arranged for marriage. Whereas the second respondent contended that the first marriage was suppressed by the first petitioner and her family members and got married him.

12. On perusal of the documents, it shows that the second respondent without even whisper about this allegation, he filed divorce petition in F.C.O.P.No.517 of 2013 before the Family Court, Salem. After a period of one year from the date of filing of divorce petition, he lodged the present complaint with the above said allegations. It shows that it is only an after thought and there is no suppression of facts by the petitioners about the first marriage and divorce decree. If the petitioners suppressed the above facts to his family members, it is the main ground for divorce and definitely the second respondent would have made specific allegation against the first petitioner in his divorce petition. That apart, the offence under Section 420 I.P.C. would not at all attract as against the petitioners since there is no dishonest intention for the petitioners to induce the second respondent to deliver any property. Therefore, the offence under Section 420 I.P.C. also not at all attracted as against the petitioners.

13. The second respondent has alleged in the complaint that the petitioners have committed offences under Sections 495, 120 (b), 420 I.P.C. It would thus be necessary to examine the ingredients of the above offences and whether the allegations made in the complaint, read on their face, attract those offences under the penal code. Section 415 of the Penal Code reads as thus:

"Section 415. Cheating:- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat."

The ingredients to constitute an offence of cheating are as follows:

- i) there should be fraudulent or dishonest inducement of a person by deceiving him;
 - ii) (a) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or
(b) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and
 - iii) in cases covered by (ii) (b) above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.
- A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

14. Section 420 of the Penal Code reads thus:

"Section 420. Cheating and dishonestly inducing deliver of property:- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable to being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

The ingredients to constitute an offence under Section 420 are as follows:

- i) A person must commit the offence of cheating under Section

415; and

ii) The person cheated must be dishonestly induced to

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under Section 420.

15. The condition necessary for an act to constitute an offence under Section 415 of the Penal Code is that there was dishonest inducement by the accused. No act on part of the petitioners has been alleged that discloses an intention to induce the delivery of any property to the petitioners by the second respondent. There is thus nothing on the face of the complaint to indicate that the petitioners dishonestly induced the second respondent to deliver any property to them. Cheating is an essential ingredient to an offence under Section 420 of the Penal Code. The ingredient necessary to constitute the offence of cheating is not made out from the face of the complaint and consequently, no offence under Section 420 is made out.

16. Therefore, in view of the above discussions, there is no conspiracy at all between the petitioners and as such the offence under Section 120(b) is also not attracted as against the petitioners. As such the entire proceedings are nothing but clear abuse of process of law and it cannot be sustained as against the petitioners.

17. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.61 of 2015 pending on the file of the learned Judicial Magistrate No.5, Salem District is quashed. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.5,
Salem District.

2.-Do- Thro The Chief Judicial Magistrate,
Salem.

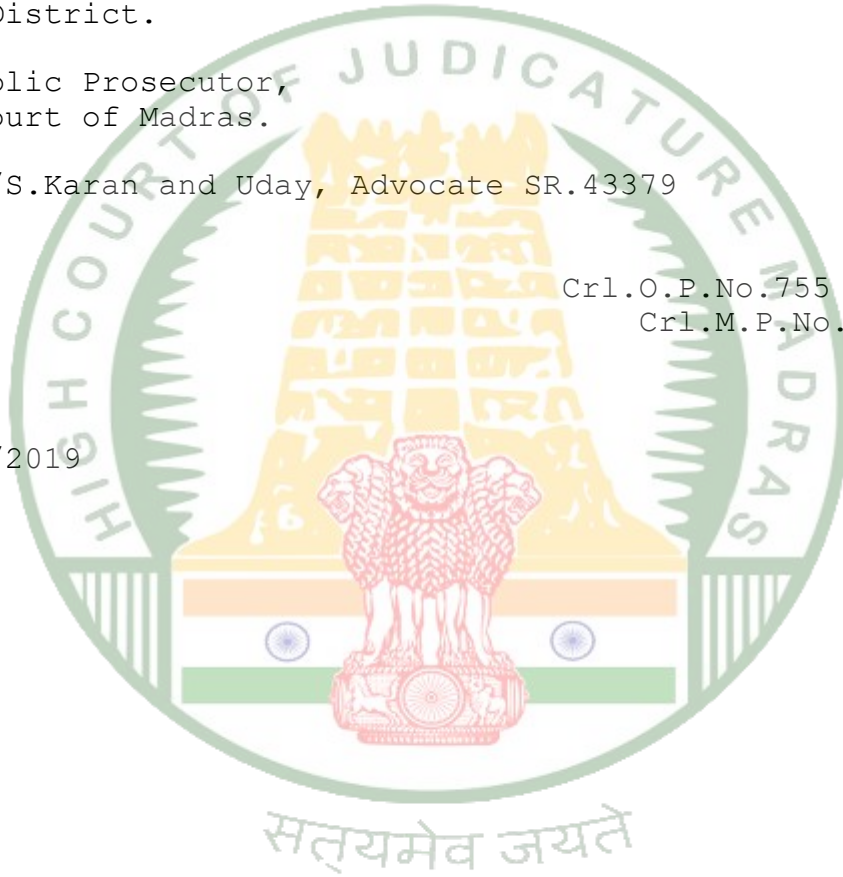
3.The Inspector of Police,
Alagapuram Police Station,
Salem District.

4.The Public Prosecutor,
High Court of Madras.

+lcc to M/S.Karan and Uday, Advocate SR.43379

Cr1.O.P.No.755 of 2016 and
Cr1.M.P.No.355 of 2016

sv[co]
srg 02/07/2019



WEB COPY