

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cr1.R.C.No.530 of 2018

Visalakshi

...Petitioner

-Vs-

1. Murugappan Ram Murugappan
2. R.Rukmani Devi
3. M.Sivagami
4. A.Rajaram
5. R.Jayalakshmi
6. R.Nithya
7. B.Kamalakaran
8. S.Kesavan

...Respondents

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order of the learned XVII Metropolitan Magistrate, Saidapet, in M.P.No.2076 of 2017 dated 26.12.2017.

For Petitioner : Mr. B.Sathish Sundar

For Respondents : Mr.Adinarayana Rao

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ORDER

The petitioner has filed a private complaint under Section 200 Cr.P.C. against the respondents for the offence under Section 494 r/w 109 of IPC before the learned XVII Metropolitan Magistrate, Saidapet, Chennai, the learned Magistrate after examining certain witnesses, dismissed the complaint, stating that the petitioner/complainant had already obtained decree of divorce from the competent Court and the present complaint for the offence under Section 494 r/w 109 of IPC is not maintainable. Aggrieved against the same, the petitioner is before this Court with the present criminal revision case.

2 According to learned counsel for petitioner, when the first marriage with the petitioner is in force, the first respondent conducted 2<sup>nd</sup> marriage with the 2<sup>nd</sup> respondent, which is not legally tenable and would attract offence under Section 494 r/w 109 of IPC. The aggrieved party can file a complaint

under Section 200 Cr.P.C., which cannot be rejected by the Magistrate, even without summoning the accused. Whatever the defence, the accused can very well establish during trial. In support of his contentions, the learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in various cases reported in 1. (2007) 7 SCC 487 (S.Nagalingam vs. Sivagami), 2. (2012) 6 SCC 353 (Ushaben vs. Kishorbhai Chunilal Talpada and others), 3. 2012 SCC Online Mad 394 (Appaiyam and others vs. Kalaichelvi), 4. 2018 SCC Online Mad 2419 (D.Gowthaman Babu and others vs. State of Tamilnadu). Hence the order passed by the Magistrate, rejecting the complaint filed by the petitioner is liable to be set aside.

3 The learned counsel for the respondents would submit that the petitioner married the first respondent on 09.09.1994 in Chennai and due to the wedlock a female child was born on 04.09.1996. The petitioner being a Canadian citizen, immigrated to Canada and the first respondent also joined her as a dependent in September 2003 and when the first respondent moved to India in April 2006, the petitioner had filed a petition for divorce before the Ontario Superior Court of Justice, Family Court, 393 University Ave, Toronto, ON M5G 1E6, stating that the first respondent had separated her due to family quarrels and moved to India. The first respondent, after receipt of the notice in the above divorce proceedings, had sent a reply questioning the jurisdiction of the Court, since their marriage had been solemnized in India. However, the Ontario Superior Court of Justice, had passed an ex-parte order in the year 2008 granting divorce and custody of child and transfer of properties stand in the name of the first respondent in Canada. In the counter filed by the petitioner in H.M.O.P.No.3312 of 2006, seeking divorce filed by the first respondent, it has been clearly stated that she already obtained decree of divorce from the competent Court. The petitioner has filed many petitions seeking various prayers. The petitioner filed restitution of conjugal rights and also domestic violence case and the petition for restitution of conjugal rights was dismissed by the Court below stating the petitioner had already obtained decree of divorce on her own interest. The petitioner has also filed a maintenance case seeking maintenance for child. The first respondent in the year of 2016 had filed petition to withdraw the H.M.O.P., without prejudice to the maintenance case pending. The petitioner acted upon the decree granted by the Ontario Superior Court of Justice and enjoyed the fruits of the decree and took away all the properties stand in the name of the first respondent and therefore, now she cannot say that the decree of divorce, which had been obtained on her own interest, is not valid and the petitioner committed offence under Section 494 r/w 109 of IPC.

4 Heard the learned counsel appearing on either side and perused the materials available on record.

5 It is seen that prior to filing of the present private complaint and many petitions, the petitioner had obtained decree of divorce from Ontario Superior Court of Justice. The petitioner enjoyed fruits of the decree by having custody of the child and taken away the properties of the first respondent. The petitioner admitted that before filing of the private complaint, she obtained decree of divorce and reiterated the same in the counter filed by her in H.M.O.P. seeking divorce filed by the first respondent. This Court is of the considered view that the petitioner is frustrating the matrimonial dispute, which has already been settled by the Ontario Superior Court of Justice. The petitioner has no locus standi to file petition against the first respondent seeking any relief. Even though, at the time of taking complaint on file, the Magistrate has to see the averment made in the complaint and not the defence of the respondent, in the present case on hand, the in the materials produced by the petitioner/complainant itself it has been stated that the petitioner had already obtained decree of divorce on her own interest. Therefore, this Court does not find any perversity in the order rejecting the complaint filed by the petitioner, warranting interference.

6 For the foregoing reasons, this criminal revision case is dismissed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The XVII Metropolitan Magistrate, Saidapet, Chennai.
2. Do Thro The Chief Metropolitan Magistrate, Chennai.
- +2 CCS to Mr. B. Sathish Sundar, Advocate sr 23795.
- +1 CC to Mr. Adinarayana Rao, Advocate sr 23518.

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SVI (CO)  
SP(10/06/2019)