

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.19859, 21208 & 21209 of 2018
and
Crl.M.P.Nos.10559, 10560, 11511, 11512, 11513, 11514 of 2018
& Crl.M.P.Nos.1913, 1915, 1916, 1917 of 2019

S.Udayashankar ...Petitioner in Crl.O.P.No.19859 of 2018/
/Accused-4
G.Palani ...Petitioner in Crl.O.P.No.21208 of 2018/
/Accused-5
R.Thiyagarajan ...Petitioner in Crl.O.P.No.21209 of 2018/
/Accused-3
-Vs-
K.Jayanthi ...Respondent in all Crl.O.Ps
/Complainant

COMMON PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the complaint filed by the respondent in C.C.No.58 of 2018 on the file of the learned Additional Mahila Magistrate, Egmore at Allikulam, Chennai and quash the same.

For petitioner in
Crl.O.P.No.19859 of 2018 : Mr.Sunder Mohan

For Petitioner
in Crl.O.P.Nos.
21208 & 21209 of 2018 : Mr.Abdul Saleem

For Respondent in all
petitions : Mr.T.Ashok Kumar

COMMON ORDER

These petitions have been filed to quash the proceeding in C.C.No. 58 of 2018 on the file of the learned Additional Mahila Magistrate, Egmore at Allikulam, Chennai, thereby taken cognizance for the offence punishable under Section 494 r/w 34 of IPC.

2. It is seen that the all the petitioners are friends of the first accused, who is none other than the husband of the respondent/defacto complainant. The marriage between the first accused and the respondent/defacto complainant was took place on 01.11.1989 and they gave birth to two children. The second accused is the younger sister of the respondent/defacto complainant and she was also living with her. The allegation is that the second accused developed an illegal contact and intimacy with the first accused and both the accused continued with illegal relationship.

3. It is seen from the complaint, with the full knowledge of the respondent/defacto complainant, the second accused is living with the first accused and so many occasions, they were warned by the defacto complainant and even then they continued their relationship and also gave birth to a female child in the year 2002. The relevant portion of the complaint is extracted here under :-

"6. The complainant submits that in spite of repeated warnings and advice, the 1st and 2nd accused were least bothered and continued their illegal relationship and they had given birth to a girl child, Miss.Snehaa in the year 2002. From then onwards, the complainant's marital life had put to an end and the family understanding and relationship were totally collapsed."

7. The complainant submits that further the 1st accused filed divorce petition against the complainant in H.M.O.P.No.1416 of 2008, before the Hon'ble Principal Family Court, Chennai-104, in order to destroy her marital life and legal spouse status before law, the same was dismissed on 31.09.2008 by the Hon'ble Principal Family Court, Chennai-104. Thereafter, the 1st accused filed another divorce petition against the complainant in H.M.O.P.No.4294 of 2013, before the Hon'ble 1st Additional Family Court, Chennai-104, the same was dismissed on 22.06.2013. In the mean time, there was lot of disturbances directly and indirectly to the complainant from the 1st and 2nd accused to her business. The complainant had approached the Court of law for her domestic protection under DV Act which is now pending before Mahila Court, Egmore, Chennai in D.V.C.No.145 of

2017. Though the divorce petitions were dismissed for the same reason, the 1st accused has chosen to file a fresh divorce petition with the same set allegations only with an intension to escape from the clutches of law and to harass the complainant mentally."

4. Insofar as the petitioners are concerned the allegation in the complaint is that they are colluded with the first and second accused for the commission of the offence under Section 494 of IPC. Though they are the law graduates, who were well aware about the earlier marriage of the first accused with the complainant, they encouraged the illegal marriage by signing as witnesses before the Registrar that the marriage between the first and second accused was already solemnized on 22.04.1999.

5. It is seen that the petitioners are classmets/friend of the first accused in M.L. Post Graduate Degree during the year 2013. Except this, they have nothing to do with the alleged second marriage of the first and second accused as alleged by the respondent/defacto complainant. It is also seen from the complaint the first accused filed a divorce petition in H.M.O.P.No. 1416 of 2008 on the file of the Principal Family Court, Chennai and the same was dismissed on 31.09.2008. Thereafter the first accused had also filed a divorce petition in H.M.O.P.No.4294 of 2013 before the 1st Additional Family Court, Chennai and the same was also dismissed on 22.06.2013. In fact the respondent/defacto complainant filed a petition under Domestic Violence Act in D.V.C.No.145 of 2017 on the file of the Mahila Court, Egmore, Chennai and the same is pending. Thereafter, the defacto complainant filed this present private complaint for the offences under Section 494 r/w 34 of IPC.

6. In this regard the learned counsel appearing for the petitioners relied upon the judgement of the Hon'ble Supreme Court of India reported in 1999 SCC Online Mad 1036 in the case of Manjula Vs. Mani and others which reads as follows:-

"21. Now taking up the case of the complainant as against the other accused viz., the accused 3 to 8, P.W. 1 Manjula in her chief examination did not say that they abetted the commission of the offence of bigamy by rendering any assistance or help to the accused 1 and 2 in their marriage. Nothing is whispered in the testimony of P.W. 1 Manjula about the part played by the accused 3 to 8 in the performance of the marriage between the accused 1 and 2 except stating that they

blessed the couple viz., the accused 1 and 2. Likewise P.W. 2 Rajagopal has also stated in his chief examination that the accused 3 to 8 blessed the accused 1 and 2 at the time of their marriage. Their blessings will not tantamount to the abetment of the commission of the offence of bigamy under Section 494 read with Section 109 of I.P.C. Therefore the order of acquittal passed by the lower Court as against the accused 3 to 8 cannot be disturbed or interfered with and the order of acquittal passed by the lower Court as against the accused 3 to 8 is maintained."

7. Admittedly, the first accused is the husband and the second accused is the own younger sister allegedly re-marry the first accused. Insofar as the petitioners are concerned they are being the friends of the first accused, they arraigned as accused in this complaint and they were nothing to do with the alleged marriage between the first and second accused. Moreover, the defacto complainant had full knowledge about their relationship, marriage and birth of a female child in the year 2002 itself. Therefore, this present complaint is clear abuse of process of law and it is liable to be quashed as against the petitioners are concerned.

8. In view of the above discussions, this Court is inclined to quash the proceedings in C.C.No. 58 of 2018 on the file of the learned Additional Mahila Magistrate, Egmore at Allikulam, Chennai, insofar as the petitioner in all petitions are concerned. However considering the nature of the allegation, the respondent/ defacto complainant is at liberty to proceed with the trial as against the first and second accused are concerned and the trial Court is directed to complete the trial proceedings within a period of six months from the date of the receipt of the copy of this Order.

9. With the above observations, all the Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

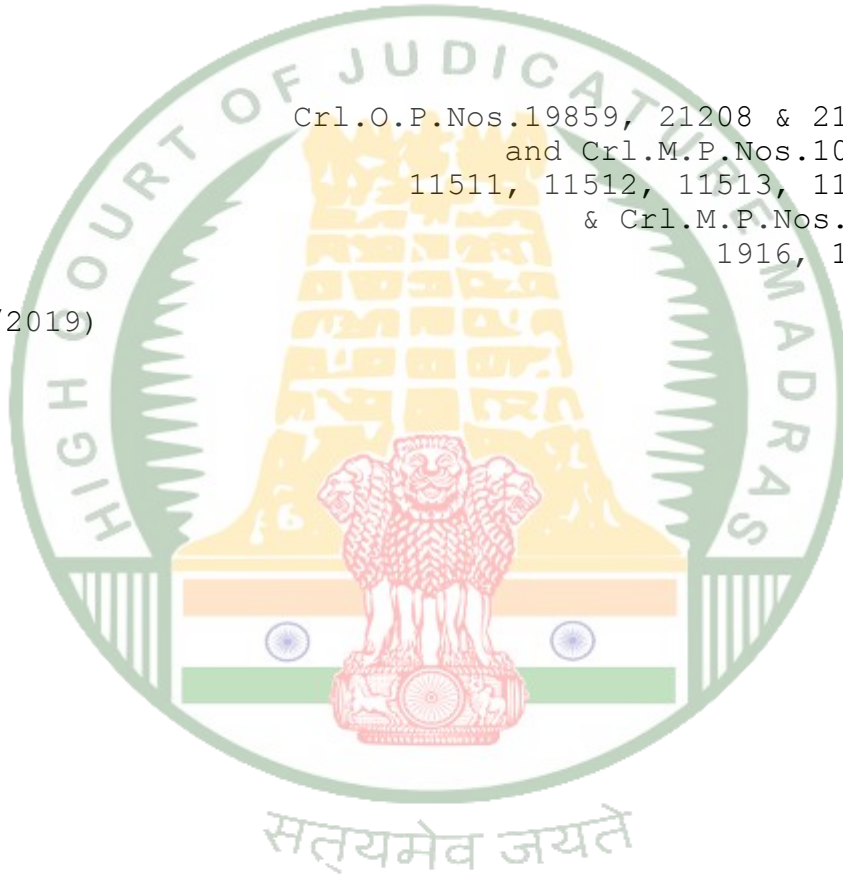
To

The Additional Mahila Magistrate Court,
Egmore at Allikulam, Chennai

+1cc to Mr.Sundar Mohan, Advocate, SR.No.35718
+2cc to Mr.N.Elayaraja, Advocate, SR.No.36380, 36381
+1cc to Mr.P.H.Manoj Pandian, Advocate, SR.No.35959
+1cc to Mr.P.H.Manoj Pandian, Advocate, SR.No.35958

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Kak(21/05/2019)



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