

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :22.07.2019
CORAM

The Honourable Mr.JUSTICE K.K.SASIDHARAN

and

The Honourable Ms.JUSTICE P.T.ASHA
W.A.No.2303 of 2019
and
CMP.No.15202 of 2019

1. The Deputy Inspector General of Police,
Ramanathapuram.

2. The Superintendent of Police,
Ramanathapuram District.

..Appellants/Respondents

Vs.

K. Arumugam, P.C.420 (A.R.),
S/o. Kumaravelu,
R.S.Mangalam Police Station,
Now at Thirupalaikudi Police Station,
Ramanathapuram District.

.. Respondent/Petitioner

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent praying to set aside the order dated 10.03.2014 made in W.P.No.6998 of 2007 on the file of this Court.

WP.NO.6998/2007:

Writ Petition having been transferred from the file of the Tamil Nadu Administrative Tribunal, Chennai, in O.A.No. 755 of 2002 is filed to call for the records pertaining to the order passed by the second respondent in P.R.No. 28 of 2000, dated 04.02.2002 and set aside the same, and direct the respondents to reinstate the petitioner in service with all other consequential benefits.

For Appellants : Mrs. A. Srijayanthi, Spl. G.P.

For Respondent : Mr. P. Ganesan for M/s. C.S.Associates

Judgment

(Judgment of the Court was delivered by P.T.ASHA, J)

The above intra court appeal is filed challenging the dismissal of the writ filed to quash a charge memo issued on the respondent herein.

2. The brief facts preceeding the filing of the above writ appeal are as follows:

A complaint dated 25.12.1999 was filed by one Gunasekaran, who is none other than the son of the respondent's paternal aunt alleging that the respondent had kidnapped his sister Alagumeenal and married her while his first marriage was subsisting. In the complaint, the said Gunasekaran would allege that the episode of the kidnapping had taken place in June 1996. Nearly two and half years thereafter, the complaint was lodged. On receipt of the complaint, a charge memo was issued to the respondent on 31.3.2000. The charge memo would indicate that the respondent had married for the second time which is in contravention of Rule 23 of the Tamil Nadu Police Subordinate Service Rules. A preliminary enquiry was held and the respondent had submitted a detailed explanation denying the charges levelled against him and had also let in his evidence to show that the allegations contained in the complaint dated 25.12.1999 were false and that the complaint itself is a vindictive one. In the said explanation, the respondent had clearly stated that he was in love with one of his cousins Amirtha Gowri and that he had an affair with her. He was tricked into registering a marriage with the said lady Amirtha Gowri when he had been selected as a Police Constable, and from 16.03.1994 he was posted at Avadi for training which went on till 09.07.1994. The respondent has thereafter filed a suit in O.S.No.245/1995 on the file of the Principal District Munsif's Court, Sivagangai to declare that the alleged marriage between himself and the said Amirtha Gowri registered on 24.07.1994 was invalid and null and void and for a direction to the 4th and 5th defendants therein to cancel the entries regarding the birth particulars of the second defendant minor Vinodh Kumar, who is said to be the son of the first defendant and the respondent and for a permanent injunction restraining the defendants 1 and 2 from claiming any rights as wife and son. This suit was partly allowed by only declaring the entry in the marriage register as null and void. However with reference to the other prayers the suit was dismissed.

3. Challenging the said judgment and decree, the said Amirthagowri and her minor son Vinodh Kumar had filed A.S.No.22 of 97 and the respondent had filed A.S.No.66 of 97 on the file of the Sub Court Sivagangai. Both the appeals were ultimately dismissed by the learned Subordinate Judge by a common Judgment and decree dated 1.4.1998. It was after the dismissal of the appeal the complaint, which is the genesis for the charge memo, had been filed by the said Gunasekaran.

4. The respondent would contend in the writ petition, that overlooking the evidence on his side, the Enquiry Officer had come to the conclusion that the complaint was genuine and it was only on the basis of the two documents which were marked as Ex.P3 (photo) and Ex.P6 which is a letter written by the said Gunasekaran's father.

5. The Enquiry Officer has totally failed to take into consideration the evidence of Alagumeenal, the sister of the complainant, who would say that she had never married the respondent and also the evidence of Alagumeenal's mother that her daughter was still unmarried. It is rather strange that a brother had not only falsely stated that his sister had been kidnapped and married but he also brought into existence a child. Both of these allegations were denied not only by the Alagumeenal but also by her mother who is also the mother of the complainant. Despite this evidence, the Enquiry Officer had held that the allegations in the complaint were proved and the second appellant, following this report, had issued a second show cause notice dated 13.10.2000.

6. On receiving the said show cause the respondent had filed OA.No.755 of 2002, originally on the file of the Tamil Nadu Administrative Tribunal which was later transferred to the file of this Court and renumbered as W.P.No.6998 of 2007 (T). This Court, on considering the records, came to conclusion that the Enquiry Officer had found the respondent guilty only on the basis of two documents which is not sufficient to prove the second marriage in the manner known to law. Ultimately the learned Judge had allowed the Writ Petition and directed the respondents to reinstate the respondent with all consequential service and monetary benefits. It is challenging this order that the State had filed the present appeal before this Court.

7. Mrs. A. Srijyanthi, Special Government Pleader on behalf of the State would contend that after a detailed enquiry, the Enquiry Officer on analyzing the evidence before him had come to the conclusion that the respondent was guilty of solemnizing the second marriage during the subsistence of his first marriage. The Leaned Counsel would further argue that it is open to the

respondent to file his explanation and participate in the enquiry to prove his innocence.

8. Mr. P. Ganesan, learned counsel for the respondent on the other hand would contend that the very basis on which the enquiry and the second charge memo has been issued is flawed as the very complaint is a false one. Therefore the respondent need not undergo the ignominy of an enquiry.

9. A perusal of the papers would indicate that the genesis for the charge memo is a complaint alleging that the respondent had contracted a second marriage during the subsistence of his first marriage. The complaint is shrouded in suspicion for the following reasons:

- a) The complaint is not by the lady Alagumeenal whom the respondent is alleged to have married for the second time.
- b) The complaint which is filed by the brother of Alagumeenal would allege that she had been kidnapped in the year 1996 and forced into marriage by the respondent. However the brother has not chosen to lodge a complaint as soon as his sister was alleged to have been kidnapped and had waited for nearly four years to lodge a complaint.
- c) The person concerned, namely Alagumeenal, and her mother have both adduced evidence to the effect that Alagumeenal had not married the respondent and further there was no son born to Alagumeenal and the respondent.
- d) There exists a family feud between the complainant Gunasekaran and the respondents family as the respondent's father had given shelter to the complainant Gunasekaran's mother (who is the sister of the respondent's father) and his sister Alagumeenal as they were suffering torture at the hands of Gunasekaran. This fact is also stated by the witnesses examined on the side of the respondent who are common relatives of the respondent and the said Gunasekaran.
- e) The allegations put forward by Gunasekaran is echoed only by Amirtha Gowri and her evidence cannot be relied upon to fasten guilt as there already exists issues between her and the respondent. During the period when the second marriage is alleged to have been contracted, the respondent was contesting a suit to declare his marriage with Amritha Gowri as null and void. Ultimately the same has been declared null and void by Judgement and decree dated 19.06.1997 in O.S.No.245 of 1995.

10. The Enquiry Officer has totally overlooked all of the above factors and the oral evidence that has been let in by the respondent as well as the witnesses on his side to show that the allegations in the complaint were totally false. The Enquiry Officer has found fault with the birth certificate produced by the said Gunasekaran to prove that a male child was born to Alagumeenal and respondent (Ex.P6) was obtained on 19.1.2000 and

marked on 27.1.2000 and that too without examining the issuing authority namely the official from the Paramakkudi Municipality. Despite expressing doubts on the said documents, the Enquiry Officer has proceeded to find flaws in the evidence produced by the respondent. The Enquiry Officer has also over looked the overwhelming evidence on the side of the respondent whose witnesses have deposed at length about the torture that Alagumeenal and her mother had suffered at the hands of Gunasekaran. The fact remains that the complainant had taken away all the retirement benefits of his father. The Enquiry report is totally flawed. The charge memo based on such a flawed enquiry report has been rightly set aside by the learned Single Judge.

11. On a conspectus of the above, we do not find any reason to interfere with the order passed by the learned Single Judge consequently the intra court appeal is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrn

To

1. The Deputy Inspector General of Police,
Ramanathapuram.

2. The Superintendent of Police,
Ramanathapuram District.

+1cc to M/s. C.S.Associates, Advocate sr.62839

+1cc to Government Pleader sr.62778

W.A.No.2303 of 2019
and

CMP.No.15202 of 2019

nmi(co)

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