

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.RC.No.961 of 2017

V.Anandhi alias Anandhavalli  
W/o.Venkataraj

.. Petitioner

Vs

1. N.Venkatraj  
S/o.Natarajan

2. N.Vijayalakshmi  
W/o.Natarajan

3. Murali  
S/o.Natarajan

4. Thilagavathi

.. Respondents

Criminal revision preferred under Section 397 read with Section 401 of Cr.P.C. seeking to set aside the order dated 28.03.2017 passed in C.M.P.No.4354 of 2016 on the file of the Judicial Magistrate Court No.I, Pollachi, by allowing the revision.

For Petitioner : Mr.N.Umapathi

For Respondents : Mr.M.Sahabudeen

O R D E R

This Criminal Revision has been preferred to set aside the order dated 28.03.2017 passed in C.M.P.No.4354 of 2016 on the file of the Judicial Magistrate Court No.I, Pollachi, by allowing the revision.

2. For the sake of convenience, the parties will be referred to by their name.

3. V.Anandhi @ Anandhavalli got married to N.Venkatraj on 16.09.2015. According to Anandhi, her husband Venkatraj was working as a Conductor in the Tamil Nadu Transport Corporation, Coimbatore. On the allegation that her husband Venkatraj got

married to Thilagavathi (4th respondent herein) on 20.01.2016 during the subsistence of her marriage with Venkatraj, Anandhi filed C.M.P.No.4354 of 2016 before the Judicial Magistrate No.I, Pollachi, under Section 200 r/w 156(3) Cr.P.C against N.Venkatraj, N.Vijayalakshmi, Murali and Thilagavathi alleging that Venkatraj (A1) and Thilagavathi (A4) have committed the offence of Bigamy under Section 494 IPC and Vijayalakshmi (A2) and Murali (A3) had abetted the said offence. The Judicial Magistrate No.I, Pollachi, rightly did not order police investigation under Section 156(3) Cr.P.C, since the prosecution for the offence under Section 494 IPC can be done only by way of a complaint to the Magistrate. Therefore, the Judicial Magistrate No.I, Pollachi, directed Anandhi to produce her witness. Anandhi examined herself as P.W.1 and examined one Palanisamy as P.W.2. Anandhi in her Sworn statement before the trial Court stated that she came to know that her husband Venkatraj married Thilagavathy on 20.01.2016. Thus, on a reading of Anandhi's Sworn statement, it is seen that she had not witnessed the marriage and that she had only heard about the marriage. In order to prove the marriage, Anandhi examined Palanisamy, whose Sworn statement was also recorded by the Judicial Magistrate. After considering the evidence adduced by Anandhi, the Judicial Magistrate No.I, Pollachi, by order dated 28.03.2017 in C.M.P.No.4354 of 2016 has dismissed the complaint petition of Anandhi by holding that there is no prima facie material to take cognizance of the offence and issue process to the accused. Challenging the order dated 28.03.2017, Anandhi is before this Court.

4. Since the Registry was not able to serve notice on Venkatraj (A1), Vijayalakshmi (A2), Murali (A3) and Thilagavathi (A4), the respondents herein, this Court, by order dated 01.08.2019 directed the Inspector of Police, Vadakipalayam Police Station, Pollachi Taluk, Coimbatore District to produce them before this Court.

5. Accordingly, today, Mr.V.Senthilvel Perumal, Sub-Inspector of Police, Vadakipalayam Police Station, Pollachi Taluk, Coimbatore District, has produced Venkatraj, Vijayalakshmi, Selvaraj and Thilagavathi before this Court.

6. Mr.M.Sahabudeen, learned counsel entered appearance on behalf of Venkatraj, Vijayalakshmi, Selvaraj and Thilagavathi.

7. Mr.M.Sahabudeen, learned counsel submitted that there is no person by name Murali, S/o.Natarajan and that Natarajan has three sons viz., Muruganantham, Venkatraj and Selvaraj and therefore, the person referred to as Murali, S/o.Natarajan, must be Selvaraj, S/o.Natarajan.

8. Today, Anandhi, the petitioner herein is also present before this Court and she identified Venkatraj as her husband, Vijayalakshmi as her sister-in-law, Selvaraj as her brother-in-law and Thilagavathy as the person, who is alleged to have married Venkatraj.

9. Mr.M.Sahabudeen, learned counsel submitted that Venkatraj has not married Thilagavathy at all and that on 20.01.2016, it was Selvaraj who got married to Thilagavathy and produced the marriage invitation and other records.

10. Of course, this Court cannot take the evidence of this nature on record. It is for this Court to peruse the evidence adduced by Anandhi before the trial Court and examine whether there is any illegality or impropriety in the order passed by the Court below warranting interference under Section 397 r/w 401 Cr.P.C.

11. As regards the powers under Section 397 r/w 401 Cr.P.C, in Girish Kumar Suneja Vs. Central Bureau of Investigation, (2017) 14 SCC 809, the Supreme has held that the revisional jurisdiction is only an entitlement and not the right. At this juncture, it is relevant to extract Paragraph No.27 of the above said decision:

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings."

12. Mr.N.Umapathi, learned counsel for Anandhi placed very strong reliance on the judgement of the Supreme Court in Dhanalakshmi Vs. R.Prasanna Kumar & Others, AIR 1990 Supreme Court 494 and the judgement of this Court in Ponnal alias Kalaiyarasi Vs. Rajamanickam & 11 others, 1998 Cri LJ 4333, and submitted that when the complainant adduced prima facie materials in the Sworn statement, the Magistrate ought to have taken cognizance of the offence and issued process.

13. One can have no quarrel with the above proposition of law. However, on a perusal of the Sworn statement of Palanisamy (P.W.2), it is seen that, he has not even stated the date on

which the alleged marriage occurred between Venkatraj and Thilagavathi. As alluded to above, Anandhi had not witnessed the alleged second marriage of her husband Venkatraj. Therefore, the order of the Magistrate in refusing to take cognizance of the offence and not issuing process to the accused, in the facts and circumstances of the present case, does not suffer from any infirmity warranting interference.

14. In the result, this Criminal Revision case fails and the same is dismissed.

Sd/-  
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.I,  
Pollachi.
2. Do- Through' The Chief Judicial Magistrate,  
Coimbatore.
3. The Inspector of Police,  
Vadakipalayam Police Station,  
Pollachi Taluk,  
Coimbatore District

+1cc to Mr.N.Umapathi, Advocate SR.No.72640

+1cc to Mr.M.Sahabudeen, Advocate SR.No.71892

CRL.R.C.No.961 of 2017

LN(CO)

GMV(26/09/2019)

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