



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD) No.12129 of 2014

and

M.P. (MD) No.1 of 2014

WEB COPY

- 1.Geetha
 - 2.R.Ayyalusamy
 - 3.Guruvammal
 - 4.Rajkumar
 - 5.Arun Kumar
 - 6.Kasi
 - 7.Lakshmi
 - 8.P.Rajendran
 - 9.V.Rajagopal
 - 10.S.Ramachandran
 - 11.M.Palanichamy
- ... Petitioners

Vs

- 1.The State Represented by
The Inspector of Police,
All Women Police Station,
Thoothukudi,
Thoothukudi District.

- 2.Perumalsamy @ Kannan
- ... Respondents

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records and quash the proceedings in C.C.No.293 of 2013 on the file of the learned Judicial Magistrate No.I, Thoothukudi, Thoothukudi District.

For Petitioners : No appearance

For R1 : Mr.A.Robinson
Government Advocate (Crl.side)

For R2 : No appearance



ORDER

There is no representation on behalf of the petitioners herein.

2. This petition has been filed for quashing the proceedings in C.C.No.293 of 2013 on the file of the Judicial Magistrate No.1, Thoothukudi.

3. The case of the defacto complainant/second respondent herein is that he got married to the first petitioner Geetha on 20.01.2008 and that the same was registered on 01.02.2008. The defacto complainant went Abroad for overseas employment. The defacto complainant would claim that when he was Abroad, he sent some 40 sovereigns of gold and other expensive items. While so, the first petitioner herein stopped talking to him. She also filed H.M.O.P.No.120 of 2011 before the Sub Court, Kovilpatti for dissolving the marriage. Later, the defacto complainant came to know that the first petitioner Geetha got married to the fifth petitioner-Arun Kumar.

4. His specific allegation is that the other accused had abetted the commission of the said offence of bigamy. The eight accused VAO is said to have issued a false certificate mentioning that the marriage between Geetha and Arun Kumar is not a bigamous marriage and it is their first marriage. He would further claim that when he challenged A2 to A4, they had criminally intimidated him. FIR was lodged by him before the All Women Police Station, Thoothukudi, leading to registration of Crime No.12 of 2012 for the offences under Sections 494, 406, 506(i), 468, 471 and 120 (B) of IPC. After investigation was taken up and final report was filed before the Judicial Magistrate No.I, Thoothukudi against all the 11 accused. The Court below took cognizance of the offences are as follows:-

Accused	Penal Provisions
A1	494, 496 and 120B of IPC
A2 to A4	406, 506(i) and 120B of IPC
A6 & A7	406 and 120B of IPC
A5, A9, A10 & A11	120B of IPC
A8	468 and 471 of IPC

To question the same, this Criminal Original Petition has been filed.

5. I went through the statements recorded under Section 161 of Cr.P.C. The power available under Section 482 of Cr.P.C. for quashing the criminal prosecution will have to be carefully exercised. If there are prima facie materials indicating the culpability of the petitioners, this Court will not be justified in



quashing the same and assumed the role of the trial Court.

6. The Hon'ble Supreme Court, in the decision reported in **CDJ 2019 SC 855**, held as follows:-

"15. In exercising jurisdiction under Section 482 it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceedings against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

16. The High Court should not, in exercise of jurisdiction under Section 482, embark upon an enquiry into whether the evidence is reliable or not, or whether on a reasonable appreciation of the evidence the allegations are not sustainable, for this is the function of the trial Judge. This proposition finds support from the Judgment of this Court in **Zandu Pharmaceutical Works Ltd. And Ors. V. Mohd. Sharful Haque and Another ((2005) 1 SCC 122)**.

17. The High Court may have an obligation to intervene under Section 482 of the Code in cases where manifest error has been committed by the Magistrate in issuing process despite the fact that the alleged acts did not all constitute offences. References may be made to **S.W. Palanikar and Ors. V. State of Bihar and Another ((2002) 1 SCC 241)**. However, it is important to remember that while exercising powers under this Section, the High Court does not function as a Court of appeal or revision.

18. The power under Section 482 of Cr.P.C should not be exercised to stifle legitimate prosecution. At the same time, if the basic ingredients of the offence alleged are altogether absent, the criminal proceedings may be quashed under Section 482 of Cr.P.C.

19. It is well settled that where the allegations set out in the complaint or the charge sheet do not constitute any offence, it is open to the High Court, exercising its inherent jurisdiction under Section 482 of the Code, to quash the order passed by the Magistrate taking cognizance of the offence. Reference may be made to **M.A.A. Annamalai V. State of Karnataka and Another ((2010) (8) SCC 524)**, **Sharda Prasad Sinha V. State of Bihar (AIR 1977 SC 1754)** and **smt. Nagawwa V. Veeranna Shivlingappa Konjalgi and Ors. (AIR 1976 SC 1947)**. The inherent power under Section 482 is intended to prevent the abuse of the process of the Court and to secure the ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. Reference may be made to **Dharampal and Ors. v. Smt. Ramshri and Ors. (AIR 1993**



SC 1361).

20. In rejecting the application, the High Court relied upon the Judgment of this Court in the **State of Haryana V. Bhajanlal (1992 Supp(1) SCC 335)** where this Court laid down the following guidelines for exercise of power under Section 482:-

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or Complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and /or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

21. In **Dhanalakshmi v.R.Prasanna Kumar and Others (1990 Supp SCC 686)**, cited by the High Court, this Court held that:-

"Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings



instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide frivolous or vexatious, in that event there would be no justification for interference by the High Court.

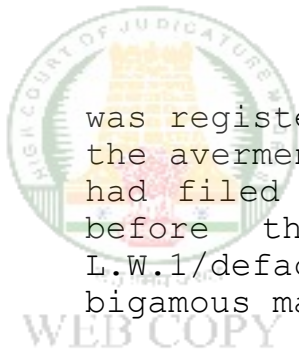
22.The High Court also relied on **State of Karnataka V. L.Muniswamy and Others (1977) 2 SCC 699**, where this Court considered the scope of jurisdiction of the High Court under Section 482 Cr.P.C. and held:-

"In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceedings in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

7. Applying the standard set out in the aforesaid decision, I am of the view that the prosecution against A4, A5, A6, A7, A9, A10 and A11 will have to be quashed.

8. The defacto complainant categorically stated that he got married to the first petitioner herein on 20.01.2008 and the same

<https://hcservices.ecourts.gov.in/hcservices/>



was registered. The statements of L.W.1 and L.W.2 clearly contained the averments in this regard. In fact, the first accused A1 herself had filed H.M.O.P.No.120 of 2011 for dissolving the said marriage before the Sub Court, Kovilpatti. The specific case of L.W.1/defacto complainant is that the first petitioner entered into bigamous marriage with the fifth petitioner Arun Kumar.

9. I went through the grounds of the criminal original petition. The first petitioner has not even denied her marriage with the fifth petitioner-Arun Kumar. But then, there is nothing on record to indicate that the fifth petitioner was aware of the earlier marriage of the first petitioner with the defacto complainant.

10. I am therefore of the view that there is no material in support of the charge against fifth petitioner-Arun Kumar. A6 and A7 are his parents. Therefore, I am of the view that the impugned proceedings against A5 to A7 will have to be quashed.

11. A2 and A3 are none other than the parents of the first petitioner. The specific allegation of the defacto complainant is that the parents of the first accused solemnized the bigamous marriage between A1 and A5. Obviously, A2 and A3 would have been aware of the marriage between the defacto complainant and A1. Therefore, there are prima facie materials in support of the charge of abetment of the offence under Section 494 of IPC. Therefore, this criminal original petition stands dismissed as regards A1 to A3.

12. A4 is the only brother of A1. He does not appear to have played any major role. He is only said to have threatened the defacto complainant. In fact, the charge against A4 is only under Sections 406, 506(i) and 120-B of IPC. The defacto complainant has not averred that he felt intimidated by the acts of A4. It is not the case of the defacto complainant that the gifts and jewellery were entrusted by him to the fourth accused herein. Therefore, there is no legally acceptable material against the fourth accused herein. Therefore, the impugned prosecution against the fourth petitioner Rajkumar is also quashed.

13. The charge against A9 to A11 is only under Section 120B of IPC alone. On a careful perusal of the materials enclosed by the prosecution, I am of the view that it would be an abuse of process to continue the prosecution against A9 to A11. Even at the time of filling this criminal original petition, A9 was aged about 69 years. A10 was aged about 72 years. They are only said to have been present on the occasion of the bigamous marriage. There is nothing on record to indicate that A9 to A11 were aware of the first marriage between the first petitioner herein and the defacto complainant. Therefore, the impugned prosecution against A9 to A11



14. A8 cannot be allowed to go scot-free. He was the Village Administrative Officer. He had given a certificate that a marriage between the first petitioner and the fifth petitioner is a first marriage. A8 could not have casually issued a certificate. The certificate by VAO carries certain weight and value. Therefore, for having issued a false certificate, A8 will have to necessarily face the trial.

15. In this view of the matter, this criminal original petition stands allowed as regards A4, A5, A6, A7, A9, A10 and A11. This criminal original petition is dismissed for A1, A2, A3 and A8. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P AND A)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Inspector of Police,
All Women Police Station,
Thoothukudi,
Thoothukudi District.

2.The Judicial Magistrate No.I, Thoothukudi,
Thoothukudi District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc Mr. A.THIRUVADI KUMAR ,Advocate, SR.No. 86202

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and
M.P. (MD)No.1 of 2014

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KK/SAR/15.10.2019/7P-5C/