



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.04.2019

Pronounced on : 08.07.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.(MD)No.407 of 2016

and

Crl.M.P.(MD)No.204 of 2016

1.D.Usha Selvakumari

2.Sharon Leon

3.Hawking Leon

... Petitioners/Accused /Accused

Vs.

1.State of Tamil Nadu, rep. by

The Inspector of Police,

All Women Police Station,

Nagercoil,

Kanyakumari District.

... 1st Respondent/Complainant/
Complainant

2.U.Agnus Shiba

... 2nd Respondent/Informant/
Informant

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.121 of 2015, on the file of the learned Judicial Magistrate No.II, Nagercoil and quash the same, insofar as the petitioners are concerned.

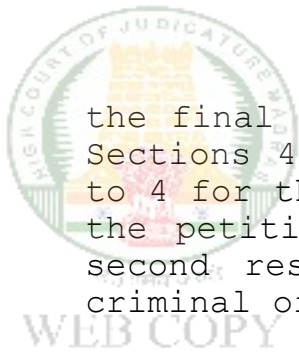
For Petitioners : Mr.N.Dilip Kumar

For Respondents : Mr.R.Anandharaj
Additional Public Prosecutor
for R.1
Mr.M.P.Senthil for R.2

ORDER

This Criminal Original Petition has been filed by the petitioners to quash the proceedings pending against them in C.C.No.121 of 2015 on the file of the learned Judicial Magistrate No.II, Nagercoil.

2. The facts of the case are that the second respondent herein is the wife of one Jefferson Pon David / first accused and alleging harassment and dowry demand at the hands of her husband and other in-laws, she lodged a complaint on 27.08.2014, in Crime No.22 of 2014. The first respondent Police, after investigation, has filed



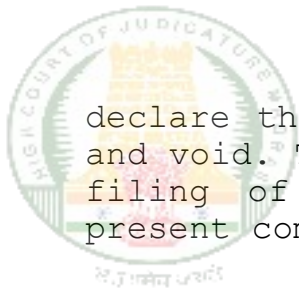
the final report as against the first accused for the offence under Sections 498(A), 406 & 506(i) IPC and as against the accused nos.2 to 4 for the offence under Section 498(A) IPC. Challenging the same, the petitioners / accused nos.2 to 4, who are the in-laws of the second respondent / defacto complainant, have filed the present criminal original petition.

3. The learned counsel for the petitioners would submit that the marriage between the first accused and the second respondent was solemnised on 18.10.2013. He further submitted that the second respondent herein had earlier married one Godwin Sam Sunil on 26.12.2011 and IDOP.No.252 of 2013 was filed to dissolve the said marriage, on the basis of a compromise deed dated 15.03.2013, based on which, the learned trial Judge dissolved the said marriage by judgment and decree dated 14.03.2014. Therefore, the learned counsel for the petitioners would contend that at the time of marriage with the first accused, the first marriage of the second respondent with the said Godwin Sam Sunil was subsisting and on a false representation that the first marriage was already dissolved by way of a decree, the second marriage was taken place. Therefore, the marriage said to have taken place between the first accused and the second respondent on 18.10.2013 itself is *void ab initio*.

4. In this background, the learned counsel for the petitioners contended that the second respondent cannot claim the status as wife of the first accused and therefore, she is not entitled to initiate a criminal prosecution as against the petitioners inasmuch as the offence under Section 498(A) IPC is concerned, as it can be invoked by a woman only against her husband or his relatives.

5. Per contra, the learned counsel appearing for the second respondent / defacto complainant submitted that the marriage took place on 18.10.2013 between the second respondent and the first accused is a second marriage for both the parties. He further submitted that the petitioners were very well aware of the existence of a compromise deed dated 15.03.2013 and they were also informed about the pendency of IDOP.No.252 of 2013. Knowing fully well, the petitioners herein have agreed for the second marriage and only thereafter, the marriage took place on 18.10.2013. At the time of marriage, 176 Sovereigns of gold articles, Rs.5 lakhs in cash and other house hold articles were given as Seethana articles. But, after the marriage, the petitioners herein as well as the first accused started harassing the second respondent and also demanded more dowry. Therefore, she has lodged the present complaint and hence, prays for dismissal of the present petition.

6. In reply, the learned counsel for the petitioners refuted the allegations raised against them and submitted that the petitioners, on knowing that they were cheated about the first



declare the marriage took place between them on 18.10.2013 as null and void. This petition was filed on 12.06.2014 and triggered by the filing of this petition, the second respondent has lodged the present complaint on 27.08.2014.

7. Heard the learned counsel appearing for the respective parties and perused the documents placed on record.

8. The petitioners before this Court are the accused nos.2 to 4 in C.C.No.121 of 2015 on the file of the learned Judicial Magistrate No.II, Nagercoil. They are the in-laws of the second respondent and the only offence charged against them is under Section 498(A) IPC. For better appreciation, Section 498(A) IPC is extracted hereunder:

"498A. Husband or relative of husband of a woman subjecting her to cruelty -

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

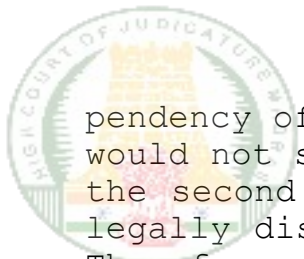
Explanation - For the purpose of this section, "***cruelty***" means -

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

9. A very reading of the Section would clearly show that it can be invoked against the husband or the relatives of the husband of a woman, who was subjected to cruelty. Though the second respondent herein has alleged cruelty and harassment at the hands of the first accused and the petitioners herein, the petitioners have taken a legal plea that since the first marriage of the second accused was in subsistence at the time of the second marriage [relating to the present complaint], the second marriage itself is void ab initio and therefore, the second respondent cannot claim the status as wife. In the absence of such status, the second respondent cannot maintain a complaint for the offence punishable under Section 498(A) IPC.

10. Admittedly, the marriage between the first accused and the second respondent was taken place on 18.10.2013 and the marriage between the second respondent and her first husband was dissolved by way of a judgment and decree only on 14.03.2014. Though the second respondent has taken a plea that the petitioners were aware of the



pendency of the IDOP petition at the time of the marriage, this plea would not stand in the eye of law, for the reason, as on the date of the second marriage, ie., on 18.10.2013, the first marriage was not legally dissolved / declared as null and void by a competent Court. Therefore, the second marriage itself is not a legally enforceable one, as such, the second respondent cannot claim the status as wife of the first accused, pursuant to the marriage took place on 18.10.2013.

11. As stated supra, Section 498(A) IPC can be invoked by a woman against her husband or his relatives alone and as the second respondent cannot claim the status as wife of the first accused, she cannot maintain a complaint insofar as Section 498(A) IPC is concerned. On this sole ground, the proceedings impugned in this criminal original petition warrants interference.

12. In addition, the petitioners have also raised a ground that after the filing of a petition, on 12.06.2014, for declaring the second marriage as null and void, the second respondent has lodged the complaint on 27.08.2014. Till such time, ie., right from 18.10.2013 [the date of second marriage], there was no complaint of harassment or cruelty, whatsoever, at their hands and therefore, according to the petitioners, only as a counter blast the present complaint came to be filed.

13. Be that as it may, this Court is not inclined to dwell into the merits of the said contention. As discussed supra, the second respondent cannot maintain a complaint as against the petitioners insofar as Section 498(A) IPC is concerned and therefore, the charge sheet pending against the petitioners in C.C.No.121 of 2015 on the file of the learned Judicial Magistrate No.II, Nagercoil, is liable to be quashed.

14. In the result, the charge sheet pending in C.C.No.121 of 2015 on the file of the learned Judicial Magistrate No.II, Nagercoil, is quashed, insofar as the petitioners are concerned and the criminal original petition is allowed accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



To

- 1.The Judicial Magistrate No.II,
Nagercoil.
- 2.The Inspector of Police,
All Women Police Station,
Nagercoil,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.N.DILIP KUMAR, Advocate SR-74274.
+1 CC to Mr.M.P.SENTHIL, Advocate SR-74396.

Order made in
Crl.O.P. (MD) No.407 of 2016
and
Crl.M.P. (MD) No.204 of 2016
08.07.2019

CS(24.09.2019) 5P 6C