



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

Crl.O.P (MD) .No.7278 of 2016

and

Crl.M.P. (MD) Nos.3690 and 3691 of 2016, 3124 of 2018

WEB COPY

1.Premkumar

2.Thillai Bagavathy

... Petitioners

Vs

Meenatchi

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in C.C.No.51 of 2012, pending on the file of the learned Judicial Magistrate No.I, Sivagangai and quash the same in so far as the petitioners are concerned.

For Petitioners

: Mr.N.R.Chandran
Senior Counsel
for Mr.K.Govindaran

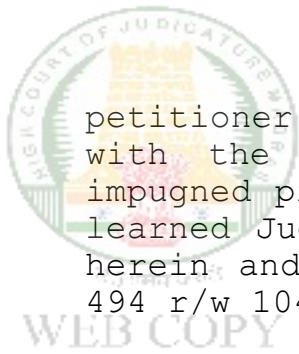
For Respondent

: Mr.M.Ramamoorthi

ORDER

The petitioners are facing trial in C.C.No.51 of 2012, on the file of the learned Judicial Magistrate No.I, Sivagangai. It is a private complaint instituted by the respondent/Ms.Meenatchi. The case of the complainant is that she got married to the first petitioner herein on 01.07.1999 at Keelapoongodi Gramam, Sivagangai Taluk, Sivagangai District, as per hindu rites and customs. No child was born through the wedlock. The marital relationship between the parties had come under strain. The respondent herein filed O.P No.910 of 2006, on the file of the I-Additional Family Court, Madras, seeking restitution of conjugal rights. The first petitioner herein filed O.P.No.440 of 2005, seeking dissolution of marriage. Both these petitions were heard together and by decrees dated 10.01.2007, the petition for divorce filed by the first petitioner herein was allowed, while the petition for restitution of conjugal rights filed by the complainant herein was dismissed. Aggrieved by the same, the complainant herein filed C.M.A.Nos.1455 and 1456 of 2007 before this Court.

2.It is her specific case that the interim order of stay was granted on 09.07.2007. According to her, in clear breach of the said interim order of stay granted by this Court, the first



petitioner herein had contracted a bigamous marriage on 07.05.2008 with the second petitioner herein. Therefore, she filed the impugned private complaint in C.C.No.51 of 2012, on the file of the learned Judicial Magistrate No.I, Sivagangai against the petitioner herein and others for having committed the offences under Section 494 r/w 104 IPC.

3.To quash the same, this Criminal Original Petition has been filed by A1 and A6.

4.Heard the learned Senior Counsel appearing for the petitioners and the learned counsel appearing for the complainant/respondent.

5.The learned Senior Counsel for the petitioners would submit that the impugned complaint deserves to be quashed for more than one ground. He would point out that the respondent herein had arrayed as many as 9 persons as accused in the complaint. During the pendency of the proceedings, two persons had already died. The other accused had filed Crl.O.P.(MD)Nos.12116 and 15451 of 2012 for quashing the proceedings. The said petitions were allowed by this Court, vide order dated 07.07.2015. The reasons for allowing the said petition are set out in paragraph Nos.10 and 11 of the said order which read as follows:-

"..10.This Court perused the complaint where in there is absolutely no averments as to whether the petitioners were aware of either the pendency of the appeal or the interim stay granted by this Court. The admitted fact is that the first accused is yet to be served. It is also stated that the first accused has been living abroad with sixth accused along with the child born out of the subsequent wedlock.

11.It is also admitted the fact that the petitioners are not party in the divorce proceedings, though Section 15 of the Hindu Marriage Act, 1955, prescribed a period before the subsequent marriage. But the same cannot be put against the petitioners, especially when the appeal was filed on 09.07.2007 and at the time of the second marriage on 07.05.2008, neither the notice in the appeal nor the stay order was served on first accused. There is absolutely no material to hold that the petitioners have the knowledge of the pendency of the appeal with interim order.."

6.The learned Senior Counsel for the petitioners' contented that the petitioners herein were also not aware of the grant of interim stay in the Civil Miscellaneous Appeals and that the reason, which led the learned Judge to quash the impugned complaint insofar



as the other accused are concerned should hold good in the case on hand also and that this Court following the said order dated 07.07.2015 ought to quash the impugned proceedings.

7.His second contention is that the Civil Miscellaneous Appeals filed by the respondent herein suffered a dismissal on 29.01.2019. Aggrieved by the same, the respondent herein had moved the Hon'ble Apex Court by filing a Special Leave Petition. While ordering notice in the Special Leave Petition, vide order dated 02.08.2019, the Hon'ble Supreme Court had made it clear that notice was being issued only to determine the quantum or alimony.

8.The other contention of the learned Senior Counsel is that when the Civil Miscellaneous Appeals have been finally disposed of, an interim order granted earlier cannot survive. He also wanted this Court to take a larger view of the matter. The offence of bigamy will arise only if the first marriage of the petitioner is still subsisting. Admittedly, the Hon'ble Supreme Court had declined to admit the Special Leave Petition with regard to the issue of dissolution of marriage. Notice has been issued in the Special Leave Petition only to determine alimony. Thus, the order dissolving the marriage of the first petitioner herein with the complainant had become final. Therefore, it would be an abuse of process to continue with the impugned prosecution.

9.He also pointed out that there is nothing on record to indicate that the petitioners were made aware of the grant of interim stay by this Court. During the course of arguments, an issue arose as to whether the first petitioner had furnished the correct address, so that the summons could have been served. The learned Senior Counsel drew my attention to the fact that even according to the complainant, the permanent address was given as Kurinchi Street, Gomathipuram, Melamadai, Madurai, but in the Civil Miscellaneous Appeal filed by her, she did not take any notice to the said address. Therefore, there is absolutely no material to come to the conclusion that the petitioners had deliberately contracted the bigamous marriage in defiance of the order of this Court. He would also point out that the first petitioner had contracted the marriage with the second petitioner only after a lapse of almost 14 months. For all these reasons, he wanted this Court to quash the impugned complaint.

10.Per contra, the learned counsel appearing for the complainant submitted that this Court should be mindful of the fact that it is exercising its jurisdiction only under Section 482 of Cr.P.C., and that it should not go into any disputed question of fact. The question whether the first petitioner had knowingly contracted the second marriage or not should be determined only in a regular trial. He also seriously faulted the conduct of the first petitioner. He drew my attention to the fact that the first



service in his petition for divorce. He, however, admitted that he had vacated the same, during the course of his cross examination. He had given some other address while being cross examined. Therefore, the complainant cannot be faulted for giving the address mentioned by the first petitioner in his cross examination. He further submitted that the conduct of the first petitioner is such that he must be non-suited at the very threshold. He also drew my attention to a few case-laws in this regard.

11.I carefully considered the rival contentions. Let me take the case of the second petitioner first. The second petitioner herein is admittedly not a party to the matrimonial proceedings between the first petitioner and the complainant herein. Therefore, the reasons assigned in the order dated 07.07.2015 made in Crl.O.P. (MD)Nos.12116 and 15451 of 2012 will certainly hold good as far as the second petitioner is concerned. In this view of the matter, I have no hesitation to quash the impugned proceedings as far as the second petitioner is concerned.

12.However, the case of the first petitioner stands on a different footing. The first petitioner married the second petitioner on 07.05.2008. On the said date, the marriage between the first petitioner and the complainant was very much subsisting. That was because an interim order staying the decree of divorce had already been granted on 09.07.2007. The matrimonial proceedings between the parties was one or contest. The first petitioner does not appear to have made any verification as to whether any appeal was filed by the respondent herein challenging the decree of divorce. Section 494 of IPC is to the effect that whoever having a spouse living contracts another marriage during the subsistence of the first marriage is said to commit the offence of bigamy.

13.In the case on hand, by subsequent developments, the marriage had been dissolved, but then on the date when the second marriage took place, the first marriage between the first petitioner and the complainant herein was very much alive. In this case, the complainant cannot really be faulted. She had correctly mentioned the address that was given by the first petitioner himself during the course of his cross examination. The learned counsel appearing for the complainant states that batta was promptly paid and notice was taken to the address, which was given by the first petitioner himself. In any event, these are matters for trial. I am not inclined to quash the impugned proceedings as far as the first petitioner is concerned. However, I make it clear that the observations now made are only for the purpose of disposal of this petition and they will not have any bearing on the merits of the matter.

14.The learned Senior Counsel states that the first petitioner is presently residing at USA. Therefore, it is not possible for him to appear before the Court below to face the trial.



Therefore, considering the facts and circumstances, the personal appearance of the first petitioner before the Court below stands dispensed with. The Court below will insist on the personal appearance of the first petitioner only on three occasions namely, to answer the charge, during examination under Section 313 of Cr.P.C., and at the time of pronouncing Judgment. On all other occasions, the first petitioner need not appear before the Court below. However, on those occasions, the first petitioner will have to be represented by his counsel. If the first petitioner's counsel is also absent, the benefit of dispensing with the personal appearance of the first petitioner will stand automatically vacated. Therefore, leaving open all the contentions and defences available to the first petitioner, this petition stands dismissed as far as the first petitioner is concerned and allowed as far as the second petitioner is concerned.

15. Accordingly, this Criminal Original Petition is partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

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Sub Assistant Registrar(CS)

sjj

To

The Judicial Magistrate No.I, Sivagangai.

+2 CC to Mr.K. GOVINDARAJAN, Advocate (SR-99892[F] dated 20/11/2019)

+1 CC to Mr.S.M.RAMAMOORTHY, Advocate (SR-100284[F] dated 21/11/2019

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