



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P(MD)No.1208 of 2017

and

Crl.M.P(MD)Nos. 1018 and 7805 of 2017

M.Prabhu

.. Petitioner / Accused

Vs.

1.State Rep., by
The Inspector of Police,
All Women Police Station,
Uthamapalayam,
Theni District.
(Crime No.1 of 2017)

.. Respondent No.1 / Complainant

2. Janani

.. Respondent No.2 / De facto
Complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records of the FIR in Crime No.1 of 2017 dated 02.01.2017, on the file of the respondent police, All Women Police Station, Uthamapalayam, Theni District and quash the same as against the petitioner.

For Petitioner : Mr.M.Vivekanandan

For Respondents : Mr.M.Chandrasekaran
Additional Public Prosecutor
For R1

Mr.M.Subash Babu
For R2

ORDER

This Criminal Original Petition has been filed to quash the First Information Report in Crime No.1 of 2017 on the file of the first respondent.

2. The case of the prosecution is that the defacto
<https://hcservices.ecourts.gov.in/hcservices/>



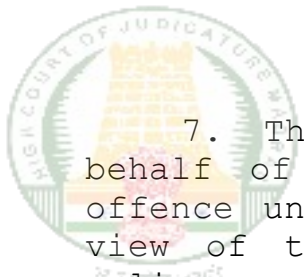
complainant had married the petitioner in the year 2012. Thereafter, there was a misunderstanding between the parties. Ultimately, the petitioner is said to have initiated proceedings for divorce. The parties were referred to the Mediation Centre and at this point of time, the defacto complainant is said to have been misled by the petitioner and his family members and her signature was obtained in a petition through which H.M.O.P.No.188 of 2014 was filed before the Sub Court, Uthamapalayam. Thus, mutual consent divorce was obtained by playing fraud on the Court and upon the petitioner. The further allegation that has been made in the complaint is that the petitioner has subsequently remarried and thereby, has committed an offence of bigamy. The mutual consent divorce has been challenged before this Court in C.R.P. (MD).No.178 of 2016 and the same is pending. Therefore, according to the defacto complainant, the accused persons have committed offences under Sections 120(b), 417, 420 and 494 of IPC., r/w. Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

3. The learned counsel for the petitioner submitted that the respondent police went wrong in registering the FIR in this case. The learned counsel, in order to substantiate the said submissions, brought to the notice of this Court the mutual consent divorce granted by the Sub Court, Uthamapalayam, in H.M.O.P.No.188 of 2014 by judgment and decree, dated 17.08.2015. By bringing to the notice of this Court the above judgment, the learned counsel submitted that till this judgment is in force, the offences as alleged in the FIR cannot be sustained against the petitioner and the other accused persons.

4. The learned counsel for the petitioner further submitted that the respondent police could not have registered an FIR for the offence under Section 494 of I.P.C., since it is barred under Section 198 of Cr.P.C., which specifically provides that for offences falling under Chapter XX of I.P.C., only a complaint can be filed before the concerned Magistrate Court. In order to explain the term "complaint", the learned counsel also read the definition of the word "complaint" provided under Section 2 (d) of Cr.P.C.

5. The learned counsel concluded her arguments by submitting that the FIR itself is an abuse of process of law and the same requires interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

6. The learned counsel appearing on behalf of the second respondent submitted that the second respondent has already taken back the brief and he has no instructions in this case.



7. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that eventhough the offence under Section 494 of I.P.C., may not be sustainable in view of the bar under Section 198 of Cr.P.C., the respondent police can independently proceed further with the investigation insofar as the offence under Sections 120(b), 417 and 420 of I.P.C., r/w Section 4 of Tamilnadu Prohibition of Harassment of Women Act. He further submitted that the allegations made in the complaint are serious and it requires investigation.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. In the considered view of this Court, the very complaint filed by the second respondent is unsustainable. This Court finds lot of force in the submissions made by the learned counsel for the petitioner. As rightly contended by the learned counsel for the petitioner, when the decree passed by the competent Court is in force, till it is set aside by another competent Court, the second respondent cannot be permitted to maintain a complaint on the ground that the decree was obtained by fraud. If the decree is in force, then the offence of bigamy is also not made out, since the petitioner has very right to marry again, in view of the dissolution of the first marriage.

10. It is seen from the records that the concerned Court has dissolved the marriage by mutual consent, after examining the parties. This is reflected in the judgment. Therefore, unless this judgment is set aside on the ground of fraud played on the Court, the same has to be taken to have a binding effect on the parties.

11. In view of the above, the FIR registered by the respondent police is an abuse of law and the same is unsustainable in the eyes of law.

12. In the result, the FIR in Crime No.1 of 2017 on the file of the first respondent police is quashed and accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)



To

1. The Inspector of Police,
All Women Police Station,
Uthamapalayam,
Theni District.

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

+1 CC to M/s.M. VIVEKANANDAN, Advocate (SR-85365[F] dated
05/09/2019)

CRL.O.P (MD) No.1208 of 2017
03.09.2019

KM/ (17.09.2019) 4P 4C