



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

WEB COPY

Crl.O.P. (MD) No.536 of 2017

Chandrakala

... Petitioner/Accused No.2

-vs-

1.The Sub Inspector of Police,
Sivakasi East Police Station,
Virudhunagar District.

2.Janaki

... Respondents/Complainants

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to quash the proceedings in C.C.No.97/2010 on the file of the Judicial Magistrate, Sivakasi, Virudhunagar District.

For Petitioner : Mr.L.Prabhu

For Respondent : Mr.S.Chandrasekar for R1
Additional Public Prosecutor
Mr.K.Gokul for R2

O R D E R

This petition has been filed seeking to quash the proceedings in C.C.No.97/2010 pending on the file of the Judicial Magistrate, Sivakasi.

2.The second respondent gave a complaint to the respondent police and an FIR came to be registered in Crime No.1065/2009 for offence under Section 498(A) IPC. The investigation was conducted and a final report came to be filed before the Court below against the husband of the second respondent and charges were framed against him for an offence under Section 498(A) IPC. During the course of proceedings, the second respondent filed an application under Section 319 of the Code of Criminal Procedure to add the petitioner as an accused in this case on the ground that the husband of the second respondent has illegally contracted a second marriage with the petitioner. This petition was entertained by the Court below and was allowed by an order dated 05.05.2016 and the petitioner was made as A-2 in the case. Aggrieved by the same, the present petition has been filed before this Court.



3. The learned counsel for the petitioner submitted that the Court below ought not to have entertained the petition filed under Section 319 of the Code of Criminal Procedure, by the second respondent. The learned counsel for the petitioner further submitted that there was absolutely no material to show that there was a second marriage in this case and even assuming that there are prima facie materials, the petitioner could not have been made as an accused in this case.

4. The learned counsel appearing on behalf of the second respondent submitted that prima facie materials were produced before the Court below to prove the second marriage between the husband and the petitioner herein. Therefore, the Court below found that the petitioner must be added as an accused and she should be made to face the charge under Section 494 IPC.

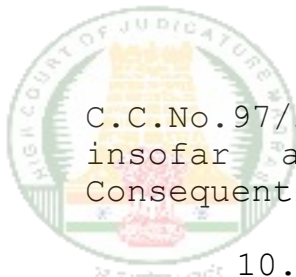
5. This Court carefully considered the submissions made on either side and the materials available on record.

6. The Court below failed to note the 'language' that is used under Section 494 IPC. The provision itself makes it clear that only the person, who contracts the second marriage during the subsistence of the first marriage, can be proceeded against under Section 494 IPC. Therefore, only the husband or wife, as the case may be, can be made as an accused, when they contract a second marriage during the subsistence of the first marriage. Hence, the petitioner could not have been made as an accused for an offence under Section 494 IPC.

7. It is further seen that in order to make a person as an accused under Section 319 of the Code of Criminal Procedure, the same cannot be done by way of the de-facto complainant filing an application to add anybody as an accused. The language of Section 319 Cr.P.C. itself makes it clear that the Court can add anybody as an accused, when sufficient materials are collected during the enquiry or trial. Sufficient guidelines have been given by the Hon'ble Supreme Court in the judgment in **Hardeep Singh v. State of Punjab and others** reported in **(2014) 3 SCC 92**.

8. In the considered view of this Court, the Court below went wrong in adding the petitioner as an accused. That apart for an offence under Section 494 IPC, the same can be initiated only by way of a complaint given by the aggrieved person and it cannot be made as a subject matter of investigation by the police. The same is clear from a reading of Section 198 Cr.P.C.

9. In view of the above discussion, the order passed by the Court below adding the petitioner as an accused is liable to be interfered with by this Court. Accordingly, the proceedings in



C.C.No.97/2010 on the file of the Judicial Magistrate, Sivakasi, insofar as the petitioner is concerned is hereby quashed. Consequently connected Miscellaneous Petition is closed.

10. In the result, the criminal original petition is allowed and the Court below is directed to proceed further with the case and complete the proceedings in C.C.No.97/2010, within a period of two months from the date of receipt of a copy of this order. Consequently connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CO)

/TRUE COPY/

Sub Assistant Registrar

RR

To

1.The Judicial Magistrate, Sivakasi,
Virudhunagar District

2.The Sub Inspector of Police,
Sivakasi East Police Station,
Virudhunagar District.

3.The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

+1. C.C. to M/S.L.PRABHU, Advocate SR.No.89471

Crl.O.P. (MD) No.536 of 2017
and Crl.M.P.No.486/2017
25.09.2019

JM/23.10.2019/3P/5C