



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.10.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.18427 of 2016

and

Crl.M.P.(MD) No.9176 of 2016

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1.Seethakumari
2.Muthiah
3.Sivagami
4.Vijayakumar

... Petitioners/A2, 9 to 11

Vs

1.State rep. by
The Inspector of Police,
All Women Police Station,
Melur, Madurai District
Crime No.07/2014

2.Vijayalakshmi

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the impugned charge sheet in C.C.No.110 of 2015 before the Judicial Magistrate, Melur, Madurai District and to quash the same.

For Petitioner : Mr.S.Mahalingam

For Respondents : Mr.M.Anandha Devi, G.A. For R1
Mr.Mr.V.Sasi Kumar for R2

O R D E R

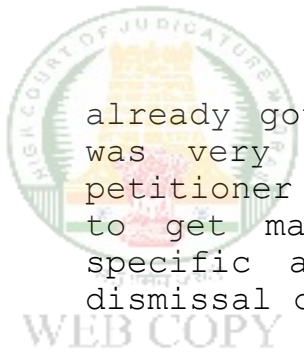
This petition has been filed to quash the impugned charge sheet in C.C.No.110 of 2015 before the Judicial Magistrate, Melur, Madurai District, against the petitioners are concerned.

2.The learned counsel appearing for the petitioners would submit that there are totally 11 accused, in which, the petitioners are arraigned in A2, A9 to A11. The first petitioner is the daughter of the second and third petitioners herein. The fourth respondent is the son of second and third respondents herein. All the petitioners were shifted their residence to Andaman from their native place for the purpose of their livelihood. They owned a grocery shop at Port Blair, Andaman. Therefore, the petitioners absolutely had no knowledge about the marriage between the first accused and the second respondent herein. Even according to the

second respondent, suppressed the earlier marriage between the first accused and the second respondent, the first accused got married the first petitioner herein. He further submitted that in fact, the first accused filed divorce petition in H.M.O.P.No.211 of 2013 on the file of the I Additional Sub Court, Melur Camp, Madurai and the same was allowed by the order dated 29.04.2016. At the same time, the second respondent/defacto complainant filed H.M.O.P.No.151 of 2013 on the file first of the I Additional Sub Court, Melur Camp, Madurai for restitution of conjugal rights and the same was dismissed. Therefore, no charge has been made out as against the petitioners as alleged by the 2nd respondent herein. He further submitted that even according to the first respondent, as against the petitioners, there are absolutely no specific allegations. The charge itself is suppressed the earlier marriage between the 1st accused and the second respondent. The first accused got married the second accused on 07.11.2013. Therefore, the petitioners had no knowledge about the first marriage between the first accused and the second respondent and they had no intention to marry the first accused with the second accused, while the first marriage of the first accused was inexistence. Therefore, he prayed for quashment of entire proceedings as against the petitioners.

3.Per contra, the learned counsel appearing for the second respondent would submit that the second accused was informed on 13.03.2014 that the first accused got married the second respondent on 07.11.2013, while the marriage was very much in existence. Further, he submitted that at the time of marriage, the first petitioner was presented with 100 sovereign of jewels, car and other household articles during their marriage. In fact, they assured during the marriage that if they presented whatever they demanded, they would not demand any further dowry in future. But, after the marriage, they demanded more dowry and also harassed the second respondent. Thereafter, the second respondent was driven out from the matrimonial house by the accused persons. Therefore, the second respondent was constrained to file a petition for restitution of conjugal rights in H.M.O.P.No.151 of 2013 on the file of I Additional Subordinate Judge, Melur Camp, Madurai. While so, with the help of other accused persons, first accused got married the second accused and also gave birth to two children. Therefore, there are specific averments and allegations as against the petitioners and the points raised by the petitioners cannot be considered by this Court under Section 482 of Cr.P.C. and it can be considered only before the trial Court during trial. Hence, he prayed for dismissal of the quash petition.

4.The learned Government Advocate (criminal side) submitted that there are totally 11 Accused and the complaint lodged by the second respondent against the first respondent has been registered in crime No.7 of 2014 for the offence under Sections 294(b, 498(A), 494), 506(2) of IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act. Insofar as the petitioners are concerned, they are arraigned as A2, A9 to A11. The first petitioner got married with the first accused even with the knowledge that the first accused



already got married with the second respondent and their marriage was very much inexistence. For the marriage between the 1st petitioner and the 1st accused, A3, A9 to 12 helped the 2nd accused to get married with the first accused. Therefore, there are specific allegations as against the petitioners and prayed for dismissal of the quash petition.

5. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (criminal side) as well as the learned counsel appearing for the second respondent and perused the materials on record.

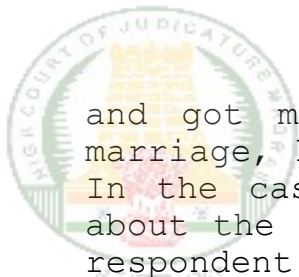
6. There are totally 11 accused, in which, the petitioners are arraigned as A2, A9 to 11. According to the case of prosecution, the first accused got married the second respondent in the year 2009 and suppressed the said fact, he got married the second accused on 07.11.2013. For the said marriage, A9 to 11 helped and cheated the second respondent herein. Even the case of the prosecution is that suppressed the earlier marriage, the first accused got married the second accused. Except the allegation that the second accused got married the first accused when the first marriage was very much in existence, no other allegations to attract other offence under Sections 294(b), 498(A), 494, 506(2) of I.P.C. and Section 4 of Tamil Nadu Provision of Women Harassment Act.

7. In this regard, it is relevant to extract Section 494 IPC, which reads thus:

"Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Exception— This section does not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge."

8. When a person has no knowledge about the earlier marriage



and got married second time without the knowledge of the first marriage, he is exempted from the offence under Section 494 of IPC. In the case on hand, the petitioners had absolutely no knowledge about the earlier marriage between the first accused and the second respondent herein.

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9.A perusal of the statement of 161(3) Cr.P.C. of the second respondent herein would reveal that the marriage between the first accused and the second respondent was suppressed by the first accused and got married with the second accused. In fact, the charge itself shows that the first accused suppressed the earlier marriage and got married with the second accused herein. Therefore, the offence under Section 494 of IPC would not attract as against the petitioners.

10.Insofar as the other offences are concerned, there are absolutely no allegations as against the petitioners to attract those offence under Sections 294(b), 498(A), 506(2) and Section 4 of Tamil Nadu Provision of Women Harassment Act.. Therefore, the entire proceedings as against the petitioner cannot be sustained and it is clear abuse of process of law. As such the petitioners need not go for the ordeal of the trial before the trial Court.

11.In view of the above discussion, this criminal original petition is allowed and the proceedings in C.C.No.110 of 2015 before the Judicial Magistrate, Melur, Madurai District is quashed insofar as the petitioners alone. The trial Court is directed to proceed with the trial as against the other accused persons and complete the same within a period six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl Side)

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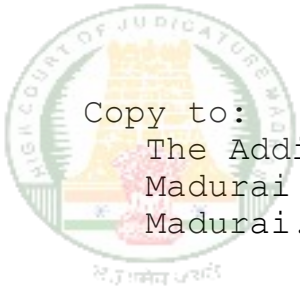
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Sub Assistant Registrar(CS)

Arul
To

1.The Judicial Magistrate,
Melur,
Madurai District.

2.The Inspector of Police,
All Women Police Station,
Melur, Madurai District



Copy to:
The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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