



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:07.12.2020
CORAM
THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

WEB COPY

Crl.O.P.(MD).No.23435 of 2016
and
Crl.M.P.(MD).Nos.12358 and 12359 of 2016

1.Chinnammal
2.Palaniyayi
3.Alaguperumal @ Alagu
4.Sathappan
5.Palaniappan @ Subbu
6.Valli

... Petitioners/ Accused 3 to 8

Vs

Pushpa

... Respondent/ Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records and quash the proceedings of the C.C.No.163 of 2016 on the file of the District Munsif cum Judicial Magistrate Court, Tiruppathur, Sivagangai District.

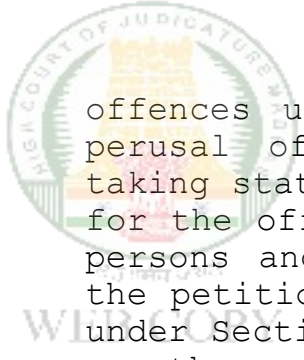
For Petitioners : Mr.G.Prabhu Rajadurai

For Respondent : Mr.M.S.Jeyakarthick

ORDER

This criminal original petition has been filed to quash the proceedings in C.C.No.163 of 2016 on the file of the District Munsif cum Judicial Magistrate Court, Tiruppathur, Sivagangai District, as against the petitioners.

2.The learned Counsel appearing for the petitioners submitted that the petitioners are arrayed as A3 to A8 and they are charged for the offence under Section 494 of I.P.C. He further submitted that the respondent is the wife of the first accused. After their marriage, due to strain relationship between them, she left the matrimonial home in the year 2014 itself. Thereafter, she has lodged a complaint before the All Women Police Station, Thiruppathur, and the same has been registered in Crime No.8 of 2014. Thereafter, the police has filed a charge sheet before the Judicial Magistrate, Thiruppathur, Sivagangai District and the same has been taken cognizance in C.C.No.60 of 2015. Thereafter, the first accused has filed a divorce petition in H.M.O.P.No.104 of 2014 before the Sub Court, Sivagangai District and the same is pending. During pendency of this petition, on 19.10.2014, the first accused got married one Radhika, who is arrayed as A2, with the help of the petitioners. Thereafter, on 22.01.2016, the respondent has filed a private complaint against the petitioners and others for the alleged



offences under Sections 294(b), 114, 494 and 506(i) of IPC. On perusal of the private complaint, the learned Magistrate after taking statement and other supporting witnesses had taken cognizance for the offence under Section 494 of IPC as against all the accused persons and issued summons. He further submitted that insofar as the petitioners are concerned they are in-laws of A1 and A2. As per under Section 494 of IPC is concerned, except the husband and wife, no other can be charged for the offence under Section 494 of IPC, if at all the petitioners are arrayed as accused only for the offence under Section 494 of IPC. He further submitted that there is absolutely no specific allegations against the petitioners. According to the respondent, the third accused conspired together and conducted marriage between the first and the second accused herein. Except this allegation, there is absolutely no evidence to attack the offence under Section 494 of IPC as against the petitioners. In support of his contention, the petitioner has relied upon the Judgment of this Court reported in **1987 CRI.L.J.1048** in the case of **C.S.Varadachari and others Vs. C.S.Shanti**, as follows:-

6.On the other hand, the learned counsel for the respondent, Mr.Sriramulu, relied on the decision reported in *J.P.Sharma Vs. Vinod Kumar Jain*, AIR 1986 SC 833 : (1986 Cri LJ 917) where it was held:

"The question at this stage is not whether there was any truth in the allegations made but the question is whether on the basis of the allegations, a cognizable offence or offences had been alleged to have been committed. The facts subsequently found out to prove the truth or otherwise on the allegations is not a ground on the basis of which the complaint can be quashed."

7.It was further held:

"Taking all the allegations in the complaint to be true, without adding or subtracting anything at this stage it cannot be said that no prima facie case for trial had been made out. That is the limit of the power to be exercised by the High Court under Section 482 Cr.P.C."

It has to be stated that the ratio laid down in the above case is not applicable to the facts of this case. That was a case instituted by the Deputy Chief Controller of Imports and Exports, against the accused persons for offence under Section 120-B, IPC and Section 5 of the Imports and Export (Control) Act, 18 of 1947 and

https://hcservices.ecourts.gov.in/ogns/ogns.html Crl.O.P.(MD).No.23435 of 2016

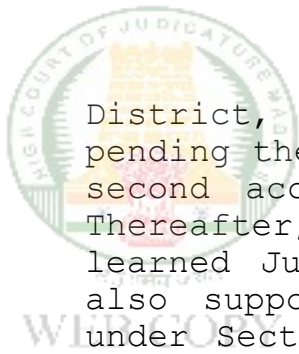


the accused persons. In these circumstances, their lordships held that at this stage the Court is concerned only with the allegations made in the complaint and that the truth or otherwise is not the criterion to quash the proceedings. On a careful analysis of the entire materials placed before me, I am of the view that the allegations levelled against these petitioners do not prima facie constitute the offence so as to warrant cognizance of the offence of abetment of bigamy under Section 494 r/w Section 114 IPC against the petitioners and further there is also no legal evidence to connect these petitioners with the alleged crime also. Hence, by allowing the proceedings to continue against the petitioners, it would be nothing but an abuse of process of Court and harassment to the petitioners. For all these reasons, I am of the view that the proceeding against these petitioners is liable to be quashed. "

3.The learned counsel for the respondent submitted that the respondent got married with the first accused and due to strained relationship, they got separated. Thereafter, she lodged a complaint and the same is pending for trial in C.C.No.60 of 2015 on the file of the learned Judicial Magistrate, Thiruppathur, Sivagangai District. He further submitted that the first accused has also filed divorce petition in H.M.O.P.No.104 of 2014 before the Sub Court, Sivagangai District, and the same is pending. While pending the divorce petition, the first accused got married the second accused with the help of the petitioners and they are living together. He further submitted that all the petitioners have helped the first accused to marry the second accused and as such, there are specific overt act attributed against them. Even then the learned Judicial Magistrate failed to take cognizance for the other offence, except the offence under Section 494 of IPC. Therefore, the complaint is very much maintainable as against the petitioners and points raised by the petitioner can be considered only before the trial Court and prayed for dismissal of this quash petition.

4.Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

5.On perusal of the records it is seen, totally there are eight accused in this case, in which, the petitioners have been arrayed as A3 to A8. Admittedly, they are in-laws of A1 and A2. The first accused originally got married with the respondent and due to strained relationship between them, the respondent left the matrimonial home. Thereafter, the first accused has filed a divorce petition in H.M.O.P.No.104 of 2014 before the Sub Court, Sivagangai



District, and it is pending. According to the respondent, while pending the divorce petition, the first accused got married with the second accused on 19.10.2015 with the help of the petitioners. Thereafter, the respondent lodged a private complaint and the learned Judicial Magistrate, after recording sworn statement and also supporting witnesses, had taken cognizance for the offence under Section 494 of IPC as against all the accused persons. The offence under Section 494 of IPC is maintainable only as against A1 and A2. It is relevant to extract 494 of IPC as follows:

"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, or either description for a term which may extend to seven years, and shall so be liable to fine"

6.Though the respondent lodged a private complaint for the offence under Sections 294(b), 114, 494 and 506(i) of IPC as against all the accused persons, the learned Judicial Magistrate had taken cognizance only for the offence under Section 494 of IPC and the respondent failed to prove the materials to attract the other offences. In fact the respondent also did not take any steps to challenge the order of not taking cognizance for the other offence by the learned Magistrate. Except the allegation that the petitioners have arranged marriage between the first and the second accused, no other specific allegations to attract the offence under Section 494 of IPC. In the case on hand, there is no evidence to prove that the petitioners have participated in the marriage between the first and the second marriage. Further there is no evidence to prove that the petitioners has abetted A1 and A2 to commit offence of bigamy under Section 494 of IPC. Therefore, the entire proceedings as against the petitioners is vitiated and it cannot be sustained as against them and it is a clear abuse of process of law and hence, the petition is liable to be quashed in respect of the petitioners.

7.Accordingly, this criminal original petition is allowed and the private complaint in C.C.No.163 of 2016 on the file of the District Munsif cum Judicial Magistrate Court, Tiruppathur, Sivagangai District is hereby quashed. Consequently, the connected criminal miscellaneous petitions are closed.

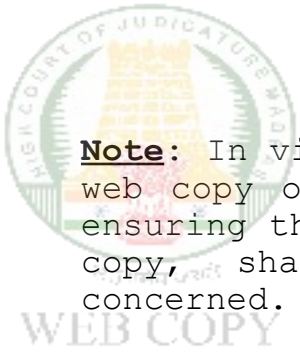
Sd/-

Assistant Registrar

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/ /2021

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The District Munsif cum
Judicial Magistrate Court,
Tiruppathur,
Sivagangai District.

+1 CC to Mr.G.Prabhu Rajadurai, Advocate (SR-24503[F] dated
08/12/2020)

+1 CC to Mr.S.Jeya Karathick, Advocate (SR-24482[F] dated
08/12/2020)

Crl.O.P.(MD).No.23435 of 2016
and
Crl.M.P.(MD).Nos.12358 and 12359 of 2016

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(NA)
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