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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM:

THE HON'BLE MR.JUSTICE V. BHARATHIDASAN

Cr1.O.P.No.30254 of 2014

and

M.P. Nos.1 and 2 of 2014

1. Vasu @ P.S.Vasudevaraj,
S/o. P.Subburaj,
2. V.Subburaj,
S/o. Venkatraman
3. S.Rukkama,
W/o. V.Subburaj
4. B.Madeshraj,
S/o. Baburaj
5. M.Vimala,
W/o. Madeshraj
6. T.Lakshminarayanan,
S/o. Thathappa
7. V.Narayanaswamy,
S/o. Venkataramanappa
8. M.Anitha,
D/o. Madeshraj

... Petitioners

Versus

1. The Inspector of Police,
All Women Police Station,
Hosur, Krishnagiri Dt.
2. T.Gowry,
D/o. Thiruthani

... Respondents/Complainants

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.156 of 2014 on the file of the Judicial Magistrate Court-II, Hosur, and quash the same.



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For Petitioners : Mr.Saravanakumar
for Ms.N.Sureka

For Respondents : Mr.C.E.Pratap,
Govt. Advocate (Crl. Side)
for R1

Mr. P.Wessely Issac for R2

ORDER

Totally, there are 8 accused. The Petitioners are arrayed as A1 to A8. They have been charged with for offence under Sec.498-A, 494, 506(i) I.P.C. and 4 of TNPWH Act r/w 109 I.P.C. in C.C.No.156 of 2014 on the file of Judicial Magistrate Court-II, Hosur. To quash the criminal proceedings, the present Criminal Original Petition has been filed.

2. The case of the prosecution in brief is as follows :-

The 2nd respondent/defacto complainant, is wife of 1st petitioner/A1. Both of them are close relatives and the marriage took place between them in the year 1993. Out of wedlock, they have got two female children. Subsequently, the 1st petitioner/A1 filed a petition for divorce in H.M.O.P.No. 55 of 2012, which said to be decreed exparte, by the learned Sub-Judge, Hosur. Thereafter, 1st petitioner/A1 got married to A8 and other petitioners, who are the parents of A1 and A8, and A6, A7 are friends of A1. The allegation against them is that they have abetted A1 for getting second marriage, while the first marriage is in existence. In the said circumstances, the criminal complaint has been filed. After investigation, final report has been filed for the offence under Sec.498-A, 494, 506(i) I.P.C. and 4 of TNPWH Act r/w 109 I.P.C. in C.C.No.156 of 2014 and the learned Judicial Magistrate Court-II, Hosur has taken cognizance of offence and issued summons to the accused. Now, to quash the above criminal complaint, the present Criminal Original Petition has been filed.

3. Mr. Saravanakumar, learned counsel appearing for petitioners would submit that from the materials available on record, absolutely no prima facie case made out against them for the alleged offences. So far as second marriage between A1 and A8 is concerned, except the vague statement of 2nd respondent, there is no materials available on record to show that 1st petitioner has got married to A8. The learned counsel would further submit that, earlier, 1st petitioner/A1 filed a petition for divorce in H.M.O.P.No.55 of 2012, on the file of Sub-Court, Hosur, and the same was decreed exparte by an order dated



22.08.2013, and on the date of alleged second marriage, the first marriage between 1st petitioner/A1 and 2nd respondent was not in existence. In those circumstances, the offence under Sec.494 was not made out. That apart, A2 to A7 are concerned, they have been implicated with the aid of Sec.109 I.P.C. Absolutely, there is no materials available on record to show that they have instigated and abetted A1 to get marriage with A8. Even though there is some allegation about alleged harassment against A1, there is no materials available on record to show that 2nd respondent was harassed by the petitioners 2 to 5/A2 to A5. Hence, the criminal proceedings against the petitioners is liable to be quashed.

4. Mr. C.E.Pratap, learned Government Advocate (Criminal side) appearing for 1st respondent strongly opposed the same and submitted that 1st petitioner/A1, has got married with 2nd respondent in the year 1993 and thereafter, they have got two daughters. Subsequently, the 1st petitioner/A1 deserted 2nd respondent and also harassed her demanded dowry. Thereafter, when the first marriage was in existence, he got married to A8. The other accused, who are parents of A1 and A8 and close friends of A1, having knowledge about existence of first marriage, instigated and abetted A1 to get married with A8. The materials available on record clearly make out prima facie case against all the accused. Hence, there is no reason to quash the proceedings.

5. Mr.P.Wessely Issac, learned counsel appearing for 2nd respondent would submit that, the 2nd respondent is the legally wedded wife of A1 and even though they are closely related, A1 to A3 have harassed the 2nd respondent demanding dowry. Thereafter, other accused joined together and abetted the 1st petitioner/A1 to get marriage with A8. So far as divorce petition is concerned, even though a exparte decree granted earlier, subsequently it was set aside and H.M.O.P.No.55 of 2012 was restored, and he has got instructions to state that, as the 1st petitioner/A1, did not appear in the H.M.O.P. proceedings, the same was dismissed for default. However, it was disputed by the learned counsel appearing for 1st petitioner/A1 and submitted that the H.M.O.P.No.55 of 2012 is decreed exparte.

6. Heard rival submissions made by learned counsel appearing for petitioners, learned Government Advocate appearing for 1st respondent as well as learned counsel appearing for 2nd respondent and perused the records.

7. The 2nd respondent/defacto complainant, is none other uncle's daughter of 1st petitioner/A1. The 2nd and 3rd petitioners are parents of A1 and 4th and 5th petitioners are parents of 8th petitioner. The 6th and 7th petitioners are the close friends of



1st petitioner. The allegation is that, the marriage between 1st petitioner and 2nd respondent took place in the year 1993, they were blessed with two daughters, and petitioners 1 to 3 have harassed the 2nd respondent demanding dowry. Thereafter, in the year 2013, A1 got married to A8 when the first marriage was in existence, for which other accused have actively abetted him. On perusal of records, and the statement of witnesses recorded during investigation, it could be seen that, the main allegation is only against 1st petitioner husband. On perusal of statement of 2nd respondent/defacto complainant, and other witnesses, it could be seen that it is only 1st petitioner husband said to have harassed the 2nd respondent demanding dowry. Absolutely, there is no allegation against A2 and A3 that they have also harassed 2nd respondent and demanded dowry and criminally intimidated her.

8. So far as the charge under Sec.494 I.P.C. is concerned, the allegation is that, during the subsistence of first marriage, 1st petitioner got married to 8th petitioner and other accused viz., petitioners 2 to 7 are implicated with the aid of Sec.109 I.P.C. on the ground that they have actively abetted A1 to get married with A8. It is the contention of learned counsel appearing for petitioner that, earlier, 1st petitioner has filed a petition for divorce in H.M.O.P.No.55 of 2012 on the file of Sub-Court, Hosur, and the same was decreed exparte on 22.08.2013. Only thereafter, he got married to A8. It was disputed by the learned counsel appearing for 2nd respondent that, H.M.O.P. was decreed exparte on 22.08.2013, the exparte decree was set aside on 26.11.2013 and the H.M.O.P. was restored. Therefore, at the time of second marriage, the H.M.O.P. was pending and the first marriage was subsisting, and the learned counsel would submit that they are liable to be convicted for the offence under Sec.494 I.P.C.

9. Considering the above submissions, whether the first marriage is subsisting or not is matter for evidence and it can be decided only during the trial. So far as petitioners 2 to 8 are concerned, they have been implicated with the aid of Sec.109 I.P.C. To bring out the offence under Sec.109 I.P.C., there must be some materials to show that, petitioners 2 to 7 have intentionally abetted 1st petitioner for conducting the second marriage. From the statement of the witnesses available on record, absolutely there is no materials to show that they have instigated and abetted A1 to get second marriage. It is only stated that all the other accused were present at the time of second marriage. Mere presence of other accused during the second marriage is not sufficient to hold that they have abetted A1 to get second marriage. So far as 8th petitioner is concerned, there is no materials to show that A8 was aware of the fact that A1 has already got married to 2nd respondent and with the knowledge of first marriage of A1, she agreed for the second



marriage. In the above circumstances, this Court is of the view that there is no prima facie case made out against A2 to A8 for offence under Sec.109 I.P.C.

10. Considering all those circumstances, I am of the considered view that, materials available on record make out a prima facie case against 1st petitioner. Hence, this petition is dismissed against 1st petitioner/A1. In respect of petitioners 2 to 8/A2 to A8, no materials available on record to make out an offence against them. Hence, I am inclined to quash the proceedings in C.C.No.156 of 2014 on the file of Judicial Magistrate-II, Hosur against petitioners 2 to 8/A2 to A8. The trial court is directed to proceed with the trial in respect of 1st petitioner/A1, and complete the same as expeditiously as possible. Further, the Trial Court is directed to decide the criminal case on merits without influenced by the observation made in this order.

11. Accordingly, this Criminal Original Petition is dismissed against 1st petitioner/A1 and the same is allowed against petitioners 2 to 8/A2 to A8. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

rpp Sub Assistant Registrar

To

1. The Judicial Magistrate,
No.II, Hosur.
2. The Inspector of Police,
All Women Police Station,
Hosur, Krishnagiri Dt.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Samivel, Advocate, S.R.No.68914

+1cc to Mr.Wesley Isaac, Advocate, S.R.No.69249

CRL.O.P.No.30254 of 2014

GJ(CO)
SU(12/01/2022)