



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

CORAM :

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Crl.O.P.No.2786 of 2017

and

Crl.M.P.Nos.1972 & 1973 of 2017

1.S.Saraswathi

2.S.Vinayagamoorthy

3.V.Sakthiya Priya

...Petitioners/Accused 3 to 5

Vs.

Sumathi

...Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records relating to complaint in C.C.No.1 of 2015 on the file of the Judicial Magistrate No.I, Coimbatore, and quash the same in respect of the petitioners alone.

For Petitioners : Mr.L.Mouli

For Respondent : Mr.C.Gunasekaran
for M/s.I.Abrar Md Abdullah

O R D E R

This Criminal Original Petition has been filed to call for the entire records relating to complaint in C.C.No.1 of 2015 on the file of the Judicial Magistrate No.I, Coimbatore, and quash the same, insofar as the petitioners are concerned.

2.The crux of the case is as follows :

2.1.The marriage between the respondent/complainant and S.Kangasabapathy (A1) was solemnized on 09.11.1994 and a female child was born to them on 09.05.1996 out of the said wedlock. The petitioners herein are the Mother-in-Law (A3), Brother-in-Law (A4) and wife of Brother-in-Law (A5) of the respondent. After marriage, their life ran into rough weather and since there was misunderstanding between the respondent and her husband (A1), the respondent was chased away from her matrimonial home to live with her parents.



2.2.While the respondent being the legally wedded wife of S.Kangasabapathy (A1) and the marriage is still in subsistence, on 21.05.2000, the respondent came to know through one N.Sivakumar (friend of her father) that her husband (A1) has married one Rajeshwari (A2) at Rathina Vinayagar Temple, R.S.Puram. Therefore, she filed a private complaint on 05.08.2010, before Judicial Magistrate No.I, Coimbatore, to punish her husband (A1), Rajeshwari (A2), the petitioners herein (A3 to A5), who are her Mother-in-Law, Brother-in-Law and wife of Brother-in-Law, one P.Kanagaraj (A6) and K.Chandra (A7), for the alleged offences under Sections 494 r/w. 109 IPC.

2.3.The learned Judicial Magistrate No.I, Coimbatore, had taken cognizance of the complaint in C.C.No.1 of 2015 on 06.01.2015 against S.Kangasabapathy (A1) for the offence under Section 494 IPC and against the petitioners herein (A3 to A5), one P.Kanagaraj (A6) and K.Chandra (A7) for the offence under Section 109 IPC.

3.Now, the Mother-in-Law (A3), Brother-in-Law (A4) and wife of Brother-in-Law (A5) of the respondent/complainant, are before this Court praying to quash the complaint filed by the respondent against them.

4.The petitioners herein submit that this complaint has been filed after ten years of alleged second marriage on 21.05.2000 performed by the respondent's husband (A1), which would show that the respondent has filed the complaint only with mala fide intention and to harass the petitioners on the alleged information received by her through one N.Sivakumar, who is the friend of her father, who allegedly saw that the petitioners were present during the alleged second marriage on 21.05.2000. The petitioners would further submit that there is no averment in the complaint explaining the reasons for the delay of ten years for lodging a private complaint. When the respondent herein allegedly had the knowledge of the second marriage performed by the respondent's husband on 21.05.2000 itself, they have not chosen to proceed further. The petitioners further submit that, even assuming the entire allegations are true, no offence is made out against the petitioners herein and the respondent herein has lodged a false complaint arraying the petitioners herein as accused only to harass them, as they are mother, brother and brother's wife of the respondent's husband (A1). They further submit that there is no specific averment in the complaint to prove that the petitioners herein were present during the alleged second marriage or they have abetted the conduct of the second marriage. The petitioners raised a ground that the private complaint for the alleged offences under Sections 494 r/w. 109 IPC was filed based on the information of one N.Sivakumar, who is the respondent's father's friend, that



too, after ten years of the alleged second marriage performed by her husband. Further, they would submit that the private complaint itself has been filed based on the information received from one N.Sivakumar, who in his statement, has clearly stated that the alleged marriage took place before nine years ago in the temple and the petitioners were present during the marriage in the temple. Mere presence in the temple along with others cannot be a ground for abetment to be charged against them and the complaint is filed only with the intention to harass the petitioners.

5.The learned counsel for the petitioners submitted that the Mother-in-Law is a 76 years old lady and the names of other accused, viz., the Brother and Brother-in-Law' wife are nowhere found in the said complaint and it is only stated in the complaint that the petitioners herein were present in the temple during the alleged marriage and the Brother-in-Law (A4) handed over two garlands to S.Kangasabapathy (A1) and S.Rajeshwari (A2), who exchanged the garlands with each other, and P.Kanagaraj (A6) handed over the Thali to S.Kangasabapathy (A1), who tied it around the neck of S.Rajeshwari (A2) with three knots. Thus, no other overt act has been made out against the petitioners for instigation or abetment of the alleged second marriage.

6.The learned counsel for the petitioners placed reliance on the judgment of this Court in the case of Muthammal and others v. Maruthathal [1981 CrI.L.J 833]. The relevant portion of the judgment reads as under :

"6. ... The definition of abetment in Section 107 I.P.C. includes not merely instigation, which is the normal form of abetment but also conspiracy and aiding, and those three forms of abetment are dealt with, in the proviso to Section 111 I.P.C. Instigation must have reference to the thing that was done. By mere association of the accused persons in this case, who are charged for an offence of abetment and the principal offender in the absence of any material to show that there was an instigation by the petitioners or that there was any intention either in aiding or in commissioning the offence committed by the first accused, it cannot be said that they have committed an offence of abetment. The accused persons can be charged and convicted for the offence of abetment where there is evidence to show such persons have instigated or otherwise abetted in the acts of the person who has actually committed the offence or the crime. In so far as the instant case is concerned, from the evidence, it cannot be said that the petitioner have committed an offence of abetment. As stated above abetment is an

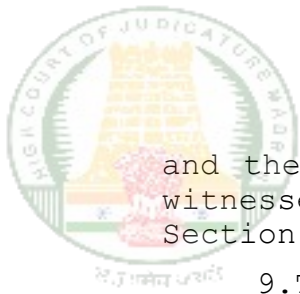


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instigation to a person to do an act in a certain way or aid some other person in doing an act which is an offence. In other words, it is a preparatory act and connotes active complicity on the part of the abettor at a point of time prior to the actual commission of the offence."

7. By placing reliance on the above judgment, the learned counsel for the petitioners would further submit that, in the said case, it was held that, mere presence of the accused at the ceremony knowing that the offence of bigamy was being committed and the throwing of holy rice over the couple, did not amount to abetment of bigamy notwithstanding that Accused No.3 therein had distributed pan after the ceremony. He further submitted that, while dealing with the offence of conspiracy, the learned Judge held that the aforesaid act, in itself, does not lead to the necessary conclusion that the act was done to facilitate the performance of the marriage, much less could it be said that thereby performance of the marriage was facilitated. Under the aforesaid circumstances, the Court has come to the conclusion that the acts which have been brought home against all the accused persons, except Accused Nos. 3 and 9 whose further case will be considered thereafter, do not necessarily amount an act of abetment and also mere throwing of sacred rice will not amount to abetment. In view of the foregoing, the learned counsel submitted that the charge of abetment under Section 109 IPC cannot be leveled against the petitioners herein.

8. The learned counsel for the petitioners, by placing reliance on another judgment of this Court in the case of C.S.Varadachari and others v. C.S.Shanthi decided by Hon'ble Mr. Justice K.Natarajan, on 24.12.1986, submitted that, in the said case, the complainant's father therein came to know that the first accused married the second accused at the instigation of Accused Nos.3 to 8, and in their presence, on 26-5-1983, at about 11 a.m., in the house of the second accused, the first accused tied Thali around the neck of the second accused and they exchanged garlands and the witnesses 1 and 2 cited in the complaint therein, at the invitation of the first accused, attended the marriage and they were informed that the relationship between the complainant and the first accused was severed. Accused 3 to 8 therein, after the Thali was tied, threw Akshathai (holy rice) and blessed the couple and gave presents. It was contended therein that, even if the entire allegations in the complaint as well as the sworn statement are true, they would not constitute an offence of abetment of bigamy against the petitioners therein. Under Section 114 IPC, abetment of the offence is not prior to the time the offence takes place but the abettor also helps in the commission of the offence. It is further submitted by the learned counsel that, in the said case, the complainant had no personal knowledge of the bigamy marriage



and the role played by any of the accused and that none of the witnesses cited in the complaint therein had been examined under Section 200 Cr.P.C. even before the complaint was taken on file.

9. The learned counsel for the petitioners further submitted that, in the aforesaid case, reliance had been placed on the decision in the case of Shriram v. U.P.State, wherein, it was held as follows :

"In order to constitute abetment, the abettor must be shown to have 'intentionally' aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of S. 107. Intentional aid and therefore active complicity is the gist of the offence of abetment under the third paragraph of S. 107."

In Krishnaswami Naidu in re, (1928) ILR 51 Mad 263: (1928-29 Cri LJ 72) it was held -

"To sustain a conviction under S. 114, I.P.C. the abetment must be complete apart from the mere presence of the abettor."

To the same effect it was held in Ram Ranjan Roy v. Emperor (1915) ILR 42 Cal 422, as follows :

"A conviction under S. 114, I.P.C. cannot stand where the abetment charged necessarily requires the presence of the abettor. To come within the section, the abetment must be complete apart from the mere presence of the abettor.""

Further, it was held that, mere association of the accused persons in the said case, who are charged with an offence of abetment of the principal offender, in the absence of any material to show that there was instigation by the petitioners or that there was any intention either in aiding or in the commission of the offence committed by the first accused therein, it cannot be said that they have committed an offence of abetment. Further, it was held that, even if they threw holy rice, blessed the couple and gave presents, the complainant therein had not examined any witness to the marriage and the alleged information was said to have been given by the witness cited in complaint to her father, who in turn, conveyed the same to the complainant. Hence, the Court had considered the said material and came to the conclusion there is no legal evidence to connect the petitioners therein with the alleged crime or criminal proceedings and quashed the criminal proceedings therein.



10. Bearing this in mind, the learned counsel for the petitioners submitted that, in the case on hand, the respondent/complainant has stated that the petitioners were present at the temple when the alleged incident happened and no other overt act other than their presence has been stated in the complaint, that too based on the information received from the said N.Sivakumar, and in the light of the judgments referred supra, the mere presence of the petitioners herein, who are the Mother, Brother and Brother's wife of S.Kanagasabapathi (A1) during the alleged second marriage, would not amount to abetment of bigamy, and hence, the charge of abetment against the petitioners is unsustainable. The learned counsel concluded his arguments by praying that the complaint may be quashed insofar as the petitioners are concerned and this petition may be allowed.

11. Per contra, the learned counsel for the respondent submitted that, when the first marriage between the respondent/complainant and S.Kangasabapathy (A1) was very well in subsistence and they have one female child born out of their wedlock, the petitioners colluded, conspired and abetted the offence by conducting the marriage of S.Kangasabapathy (A1) with S.Rajeshwari (A2), when the respondent/complainant and her daughter are very much available. The learned counsel further submitted that the petitioners herein have instigated the offence and they along with P.Kanagaraj (A6) and K.Chandra (A7), abetted and conducted the second marriage of S.Kangasabapathy (A1) with S.Rajeshwari (A2), knowing very well that it is a bigamy.

12. The learned counsel for the respondent/complainant submitted that, though there was a delay in filing the complaint, it is a continuing offence and hence, the complaint can be filed at any point of time, and after getting enough evidence of the second marriage, viz., the Birth Certificates of the two children born out the second wedlock between S.Kangasabapathy (A1) with S.Rajeshwari (A2), the complaint has been filed after ten years. The learned counsel further submitted that the petitioners have shown their active participation in the wedding of A1 and A2 and they have abetted the offence and hence, prayed for dismissal of this petition.

13. This Court gave its anxious consideration to the rival submissions and perused the materials available on record.



14. Though the complaint has been filed against seven accused, the Mother-in-Law (A4), Brother-in-Law (A5) and Brother-in-Law's wife (A6) of the respondent/complainant are before this Court seeking to quash the complaint insofar as they are concerned. The charge leveled against the petitioners herein in the complaint is "abetment of offence" under Section 109 IPC. Therefore, it is imperative upon this Court to venture into the aspect as to whether, prima facie, the ingredients of Section 109 IPC are made out against the petitioners in order to sustain the criminal proceedings against them.

15. On a perusal of the complaint, it is seen that the respondent/complainant has stated as follows :

15.1. The marriage of A1 and the respondent/complainant was conducted as per Hindu Rites and Customs on 09.11.1994 at Ramalinga Sowdambika Amman Kalyana Mandapam, Coimbatore. After marriage, they were living at A1's house and they were living peacefully for six months, and thereafter, the relationship got strained and he started abusing and assaulting the complainant without any reason or justification at the instigation of his mother (A3) and she was tolerating the same as she was pregnant. She had always been his beautiful wife and she was pregnant out of the wedlock. However, she was tortured by her husband (A1) and the petitioners herein. They were demanding jewels and money from the parents of the complainant.

15.2. After performing Valaikappu, she was taken to her parents' house and she gave birth to a female child on 09.05.1996 at Hari Hospital, Saibaba Colony, Coimbatore. Even after the news reached them that a female child has born, her husband (A1) and his family members never visited the house of the complainant to see the child. But after three months, A1 took the complainant to the matrimonial home. Instead of showing love and affection towards the new born baby, they have started showing aversion, since the child happened to be a female baby. Her husband (A1) and his mother (A3) demanded huge money and jewels from the parents of the complainant and scolded her by saying as to why she gave birth to a female child and they won't spend even a single pie for the development of the child and if she wants to nourish and grow the child, to go and get thousands and lakhs of rupees from her parents and only then, they would allow her to remain at home. At one point of time, when the complainant was severely indisposed, A1 refused to take her to the hospital for treatment. On 08.10.1997, she was driven out from the matrimonial home. Thereafter, once, A1 came to the complainant's parents' house along with his men and made attempt to snatch away the child, but his attempt was thwarted.



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15.3.Setting out false allegations against the complainant, A1 had filed a petition in H.M.O.P.No.18 of 1998 seeking for divorce dissolving the marriage between the complainant and A1 and the same was dismissed. He filed an appeal before this Court in C.M.A.No.1972 of 2004 and the same was also dismissed.

15.4.She and her daughter are living with her parents. Her father is a retired mill employee and with the pension amount, he could not maintain the complainant and her school going child. Hence, the complainant filed a Maintenance Case in M.C.No.1 of 2005 before the Family Court and the Court ordered a sum of Rs.1,750/- per month towards maintenance and the case is pending.

15.5.In the meanwhile, she came to know about the second marriage between A1 and A2. She could not immediately file the complaint as she did not have any evidence and they also did not believe the same. Now, they tried to get the Birth Certificates of two children, namely, Akshaya and Hariharan, born out of the second wedlock between A1 and A2, and they filed them as documents. All the accused persons, knowing very well that the first marriage held between the complainant and A1 is still subsisting, actively participated and instigated the marriage held between A1 and A2 and hence, the accused are liable to be punished for the offences under Sections 494 r/w.109 IPC.

16.Amidst the narration of facts, the detailed allegations made by the respondent/complainant in her complaint against the accused persons, with regard to the conduct of second marriage, are as follows :

16.1.The respondent/complainant came to know through her father's friend N.Sivakumar that her husband (A1) has married S.Rajeshwari (A2) at Rathina Vinayagar Temple at R.S.Puram on 21.05.2000, even when the marriage between her and her husband is still subsisting.

16.2.The said N.Sivakumar found the husband of the complainant (A1) in Muhurtha Dhoti and S.Rajeshwari (A2) in Muhurtha Saree. Further, he noticed that A3 to A7 were also dressed up in new clothes.

16.3.The Thali was taken by P.Kanagaraaj (A6) and was handed over to S.Kanagasabapathy (A1), who tied the Thali with three knots on the neck of S.Rajeshwari (A2) with the assistance of K.Chandra (A7).

16.4.Further, her Brother-in-Law S.Vinayagamoorthy (A4) handed over two garlands to A1 and A2, who exchanged the garlands for each other.

16.5.Further, the new couple had fallen at the feet of her Mother-in-Law Saraswathi (A3) and K.Chandra (A7), who blessed them.



16.6.S.Vinayagamoorthy (A4) and Sakthiya Priya (A5) were also wishing them with a small bouquet.

16.7.The ceremonies were conducted as per Hindu Rites and Customs.

16.8.When the same was questioned by the said N.Sivakumar as to how they can conduct the second marriage when the first marriage with the complainant is subsisting, all the seven accused criminally intimidated him and warned him not to interfere with the matrimonial matter, hence, he kept quiet and came out.

17.The respondent/complainant, in her statement before the Police, has stated as follows :

The respondent/complainant's father's friend visited the temple at R.S.Puram. She did not remember the date. At that time, her husband (A1) and S.Rajeshwari (A2) were seen in Muhurtha Dress and the same was informed to her and on that day, his uncle P.Kanagaraj (A6) had taken out the Thali and handed over the same to A1, who tied the Thali around the neck of A2. At the time, the petitioners herein (A3 to A5), his uncle P.Kanagaraj (A6) and K.Chandra (A7) were also present at the place of occurrence. When enquired, A1 replied by asking him to mind his own business ("cd; ntiyia ghh;j;Jf; bfhz;L ngh"). On further enquiry, it was found that they were having two children, namely Akshaya and Hariharan, and since they did not get any evidence, relating to the second marriage, she had not given any complaint and only when she got some evidence, she filed the complaint.

18.Subramani, the father of the respondent/complainant, and the said N.Sivakumar, in their evidence before the Court, have corroborated the version of the respondent/complainant.

19.On a careful perusal of the averments made in the complaint as well as the statement and evidence recorded on the side of the respondent/complainant, it is seen that the main allegation made against the petitioners herein is that they were present during the second marriage and the specific allegation against the Mother-in-Law (A3) is that the married couple (A1 & A2) had fallen at the feet of A3 and she had blessed them. The specific allegation made against the Brother-in-Law (A4) and his wife (A5) is that they were wishing the couple (A1 & A2) with a small bouquet.



20. Section 109 IPC defines that an act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment. The main offence as alleged in the complaint is the bigamy between S.Kanagasabapathy (A1) and S.Rajeshwari (A2). Therefore, the offence alleged against the petitioners herein is the abetment of the bigamy of A1 with A2.

21. On a careful reading of the facts narrated in the complaint, it could be noticed that the marital life of the respondent/complainant with S.Kanagasabapathy (A1) got strained, which culminated into several matrimonial proceedings between the respondent and her husband, and the respondent started living with her parents. While that being so, the situation became tough when the respondent came to know through her father's friend N.Sivakumar that her husband (A1) married one S.Rajeshwari (A2) in the presence of A3 to A7, even while the marriage between the respondent and A1 was in subsistence. The allegations against the petitioners in the complaint have been made entirely based on the hear-say information received from the said N.Sivakumar. To be noted, the respondent had no personal knowledge of the alleged second marriage, nor was she present at the place of occurrence. The respondent has stated that the second marriage was conducted as per Hindu Rites and Customs. Therefore, it is quite common in a Hindu Marriage that the new couple exchange garlands and fall at the feet of the parents to seek blessings and be gifted with bouquets and presents. In *Muthammal v. Maruthathal* (supra), it is held that, mere presence of the accused persons during the second marriage, even knowing that it is a bigamy, and blessing the couple by throwing sacred rice over them, would not amount to abetment or instigation of the second marriage. Nevertheless, in the instant case, the only overt act against the Mother-in-Law, being the mother of A1, is that, she had just blessed the couple, much less throwing sacred rice on them. The allegation made against the Brother-in-Law (A3) is that he gave garlands to A1 and A2, who exchanged them for each other, and thereafter, A3 and A4 presented a small bouquet to the couple. However, no witness has been examined to prove the said allegations against A3 and A4. On a whole, the overt acts as alleged by the respondent in her complaint against the petitioners are only in the nature of facilitating the performance of marriage and even assuming the allegations are true, there is no iota of evidence nor any proof to the effect that they have instigated or conspired or abetted the bigamy of A1 with A2.



22.Further, as far as the delay in filing the complaint is concerned, it is the contention of the learned counsel for the respondent/complainant that the offence under Section 494 IPC is a continuing offence, and hence, the complaint can be lodged at any point of time. Be that as it may, even assuming the delay is immaterial, since this Court has opined that the acts of the petitioners herein do not amount to abetment of offence, in the foregoing paragraph, the complaint can be quashed on that very ground itself, insofar as the petitioners are concerned.

23.Therefore, in the light of the narrative supra, the complaint in C.C.No.1 of 2015 on the file of the Judicial Magistrate No.I, Coimbatore, is quashed insofar as the petitioners are concerned, and this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mk
To

The Judicial Magistrate No.I,
Coimbatore.

+1 CC to Mr.L.Mouli, Advocate, Sr.No. 41309.

Cr1.O.P.No.2786 of 2017

GPL(CO)
LS(07/09/2021)