



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.1364 of 2019
and
Crl.M.P.No.18143 of 2019

Ravichandran

... Petitioner

Versus

Dhanalakshmi

... Respondent

Criminal Revision Case filed under Section 397 r/w 401 Criminal Procedure Code, to set aside the sentence passed by the learned III Additional District and Sessions Judge, Cuddalore, Virudhachalam in Crl.A.No.76 of 2018 dated 01.10.2019 under Section 494 IPC for 3 years R.I and imposed fine of Rs.2,000/- and confirmed the order dated 02.08.2018 passed in C.C.No.202 of 2000 on the file of the Judicial Magistrate No.II, Virudhachalam.

For Petitioner : Mr.K.Natarajan

For Respondent : Mr.R.Sethuvarayar

O R D E R

This Criminal Revision Case has been filed against order dated 1.10.2019 passed in Crl.A.No.76 of 2018 by the learned III Additional District and Sessions Judge, Cuddalore, Virudhachalam.

2.The respondent/complainant herein filed a private complaint before the learned Judicial Magistrate No.II, Virudhachalam against the petitioner herein and others. The learned Magistrate taken the cognizance of the complaint in C.C.No.202 of 2000. After trial, the petitioner found guilty for the offence under Section 494 IPC and convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2000/-, in default, to undergo simple imprisonment for a period of two months. Challenging the said



judgment, the petitioner preferred an appeal before the learned Principal District and Sessions Judge, Cuddalore. The learned Sessions Judge taken the appeal on file in C.A.No.76 of 2018 and made over to the learned III Additional District and Sessions Judge, Cuddalore @ Virudhachalam. After hearing the arguments advanced on either side and considering materials available on record, the learned III Additional District and Sessions Judge, Cuddalore @ Virudhachalam dismissed the appeal and confirmed the judgment of the trial Court. Aggrieved over the said judgment, the petitioner is before this Court by way of Criminal Revision Case.

3.The learned counsel for the petitioner would submit that the marriage between the petitioner/A1 herein and Accused No.2 viz., Selvakumari was not performed as per the Hindu Rites and Customs and it is not a valid one. Though P.W.2 in his chief examination has stated about the marriage performed between the petitioner and Accused No.2, but, in his cross examination, he has disowned his own evidence and there is no materials to show that during the subsistence of first marriage, the petitioner married another woman viz., Selvakumari. Therefore, the trial Court failed to appreciate the entire evidence and only based on presumption and sympathy convicted and sentenced the petitioner. The appellate Court as a fact finding Court has also failed to re-appreciate the entire evidence and simply dismissed the appeal and confirmed the order of the trial Court, which warrants interference of this Court.

4.The learned counsel for the respondent would submit that during the subsistence of marriage between the petitioner and the respondent herein, the petitioner married another woman viz., Selva Kumari and they have begotten three children and also obtained Ration Card, which clearly shows that the petitioner married Selva Kumari. Hence, both the Courts below are rightly appreciated the entire evidence and convicted and sentenced the petitioner and there is no merit in this revision and the same is liable to be dismissed.

5.Heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the materials available on record.

6.Admittedly, the respondent filed the private complaint against the petitioner in C.C.No.202 of 2000 before the learned Judicial Magistrate No.II, Virudhachalam. During the trial, on the side of the prosecution as many as 3 witnesses were examined as P.W.1 to P.W.3 and marked one document as Ex.P1. On the side of the defence, one witness was examined as D.W.1 and one document was marked as Ex.D1 and also examined two Court witnesses as C.W.1 and C.W.2 and marked five documents as Ex.C1



to Ex.C5. On completion of the trial, the petitioner was convicted and sentenced for the offence under Section 494 IPC. Challenging the said judgment, he preferred the appeal and the same was dismissed by the appellate Court on 01.10.2019.

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7. On a careful reading of the evidence of P.W.2, who attended the marriage of the petitioner and Accused No.2 has clearly shows that on 10.09.2000, the petitioner solemnized marriage with one SelvaKumari/A2 at Pillaiyar Koil, Kattukarai and P.W.2 witnessed the same. At that time, the parents and relatives of bride and bridegroom are present and the petitioner and A2 exchanged garlands and the petitioner tied thali. Further, the evidence of P.W.1 clearly shows that the marriage between the petitioner and Accused No.2 was solemnised on 10.09.2000 at Pillaiyar Koil as per Hindu Rites and Customs by tying Thali in the presence of parents and relatives of the petitioner and A2. Therefore, the prosecution witnesses P.W.1 to P.W.3 clearly deposed that there was first marriage performed between the petitioner and the respondent and during the subsistence of the first marriage, the petitioner married Selvakumari/A2.

8. Though the learned counsel for the petitioner vehemently contended that P.W.2 during cross examination has disowned his evidence in chief. On a careful reading of evidence of P.W.2, it reveals that chief examination was conducted on 23.05.2016, but, on the same day, he was not cross examined by the defence counsel. Subsequently, after two years, P.W.2 was cross examined, the reasons best known to them. Therefore this Court is not inclined to take the evidence of cross examination of P.W.2.

9. On a combined reading of evidence of P.W.2 and Family Card of the petitioner/A1 and A2, which was marked as Ex.P1, this Court finds that during the subsistence of the first marriage between the petitioner and the respondent, the petitioner married A2 and hence, the petitioner has committed the offence under Section 494 IPC. Therefore, both the Courts below are rightly appreciated the oral and documentary evidence and convicted and sentenced the petitioner.

10. It is a settled proposition of law that when the Trial Court and the Appellate Court had already appreciated the entire evidence and also given a concurrent findings, while exercising the revisional jurisdiction, this Court cannot re appreciate the evidence and take another view. Therefore, this Court has to see whether there is any perversity or infirmity in the order of the Courts below. Hence, this Court does not find any perversity or infirmity in the order of the Courts below. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected



miscellaneous petition is closed.

11. Insofar as the quantum of sentence is concerned, during the subsistence of first marriage, the petitioner married A2 and it has spoiled the life of the respondent, this Court does not find any mitigating circumstances to reduce the sentence of the petitioner.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

ms

To

1. The III Additional District and Sessions Judge,
Cuddalore, Virudhachalam
2. The Judicial Magistrate No. II,
Virudhachalam.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.R.Sethuvarayar, Advocate, S.R.No.42724

+1cc to M/s.K.Natarajan, Advocate, S.R.No.42838

Cr1.R.C.No.1364 of 2019

JP-II (CO)
SU(24/09/2021)