



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 02.08.2021

Pronounced on : 15 .09.2021

CORAM:

THE HONOURABLE MR JUSTICE G.ILANGOVA

Crl.O.P.(MD) No.10204 of 2021

and Crl.M.P(MD)Nos.5222 and 5223 of 2021

WEB COPY

Habeeb Nisha

... Petitioner/A2

Vs.

1.Nasreen Banu

..1st Respondent/Defacto Complainant

2.The Inspector of Police,
All Women Police Statiion,
Pattukottai,
Crime No. 7 of 2018

.. 2nd Respondent/Complainant

PRAYER: Criminal Original Peititon is filed under Section 482 of Cr.P.C to quash the C.C.No.14 of 2019 on the file of the Judicial Magistrate, Pattukottai.

For Petitioner : Mr.M.Siddharthan
For R2 : Mr.R.M.Anbunithi
Additional Public Prosecutor

O R D E R

This writ petitioner is filed seeking quashment of C.C.No.14 of 2019 on the file of the Judicial Magistrate, Pattukottai.

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

The defacto complainant namely, the first respondent was married with one Sirajitheen, who is the first accused some 10 years prior to the complaint. They got 2 female children. The first accused was having illegal contact with the second accused, who is the petitioner herein and when that was questioned by the defacto complainant, the first accused demanded divorce from her. On that ground, the defacto complainant was harassed and ill-treated. He also criminally intimidated stating that if no consent for divorce is given by her, she and her children will be killed. On that basis, the complaint was given. The first accused was warned by the police. Later he went abroad and returned back on 03.05.2018. Having ill-treated and harassed her, he also married the second accused on 26.10.2017 and when that was questioned by the defacto complainant, she was harassed and ill-treated and assaulted. On that basis, the present complaint was given before the second respondent police. A case in Crime No. 7 of 2018 was registered for the offences punishable under Sections 498(A), 494 and 506(i) IPC. During the



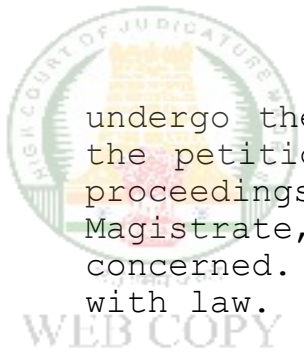
course of investigation, materials were collected and statement of the witnesses have been recorded. After completing the investigation, final report was filed before the Judicial Magistrate, Pattukottai which was also taken cognizance in C.C.No.14 of 2019. Seeking quashment of the abovesaid case, the second accused before the trial court has preferred this petition mainly on the ground that Section 494 IPC is not attracted against this petitioner and other offences namely Section 498(A) and 506(i) are not alleged against this petitioner.

3. Since the petition has been filed on the legal issue, notice was not ordered to the first respondent, who is the defacto complainant herein.

4. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the second respondent police.

5. From the narration of the facts above, the allegation made against this petitioner is that she has committed the offence punishable under Section 494 IPC. According to the learned counsel for the petitioner, Section 494 IPC is not attracted against this petitioner on the legal ground that so far as the petitioner is concerned, it is first marriage with the first accused. Only the first accused married her as second wife. Moreover, as per the Muslim Law, a male can marry 4 women at the same time. It is permitted under the Personal Law, which is not prohibited. Moreover, for attracting Section 494 IPC, the main ingredient is that second marriage must be a void marriage. But here, the second marriage with the petitioner by the first accused is not void marriage since Muslim Personal Law permits 4 marriages. So on that ground, she cannot be prosecuted.

6. For that purpose, the learned counsel for the petitioner would rely upon the judgment of the Hon'ble Supreme Court of India in **K.Venugopal Vs.Union of India, New Delhi** reported in **2016 SCC 224**, wherein the Hon'ble Supreme Court has stated that for attracting offence under Section 494 IPC, second marriage should be shown to be void. Similarly it has been observed that the term ''husband and wife'' indicates that the personal law will continue to apply so long as the marriage remain subsisting. So, this shows that personal law of the parties are applicable when the offence under Section 494 IPC is alleged. Here as I mentioned earlier, it is not second marriage for the petitioner but only a second marriage for the first accused, that too, is not void as per the personal law. Even if we look the case of the petitioner from any angle, the answer can be that the petitioner cannot be proceeded for committing the offence under Section 494 IPC. As mentioned earlier, the other offences under Sections 498(A) and 506(i) IPC are not alleged against this petitioner. If at all only the first accused has to



undergo the trial process. Continuation of the proceedings against the petitioner will amount to abuse of process of law. Hence, the proceedings in C.C.No.14 of 2019 on the file of the Judicial Magistrate, Pattukottai, is quashed so far as the petitioner/A2 is concerned. Trial may proceed against the first accused in accordance with law.

7. In the result, this petition is allowed. Consequently, connected miscellaneous petitions are closed

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

CM

To,

1.The Judicial Magistrate, Pattukkottai

2.The The Inspector of Police,
All Women Police Statiion,
Pattukottai

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.SIDDHARTHAN, Advocate (SR-29385[F] dated
16/09/2021)

Crl.O.P. (MD) No.10204 of 2021

15.09.2021

PS (CO)

KB(29.09.2021) 3P 5C