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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on
08.03.2022

Orders pronounced on
26.05.2022

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.Nos.472 and 831 of 2016
and
Crl.M.P.Nos.196, 8671 of 2016
in Crl.OP.472/2016 and 397 & 8671 of 2016
in
Crl.OP.No.831 of 2016

Crl.O.P.No.472 of 2016

Sathyakala Rajangam

... Petitioner

Vs.

1.E.Vedavanam

2.Dr.S.Karthikeyan

... Respondents

This Criminal Original Petition is filed under Section 482 Cr.P.C. to call for the records relating to C.C.No.7661 of 2014 on the file of the X Metropolitan Magistrate at Egmore, Chennai, for an offence under Section 494 r/w.107 of IPC and quash the same insofar as the petitioner is concerned.

For Petitioner : M/s.A.Saravanan
for
M/s.R.Shivakumar

For Respondent-1: Mr.R.Baskar

Crl.O.P.No.831 of 2016

Dr.S.Karthikeyan

... Petitioner

Vs.

1.E.Vedavanam

2.Sathyakala Rajangam

... Respondents



This Criminal Original Petition is filed under Section 482 Cr.P.C. to call for the records relating to C.C.No.7661 of 2014 on the file of the X Metropolitan Magistrate at Egmore, Chennai, for an offence under Section 494 r/w.107 of IPC and quash the same insofar as the petitioner is concerned.

For Petitioner : M/s.A.Saravanan
for

M/s.R.Shivakumar

For Respondent-1: Mr.R.Baskar

COMMON ORDER

These Criminal Original Petitions are filed to call for the records in C.C.No.7661 of 2014 on the file of X Metropolitan Magistrate, Egmore and to quash the same.

2. Complaint in C.C.No.7661 of 2014 was filed by the first respondent for the offence under Section 494 r/w. 107 IPC. The case of the first respondent, in brief, is as follows:-

First accused is the petitioner in CrI.O.P.No.472 of 2016 and second accused is the petitioner in CrI.O.P.No.831 of 2016. First respondent is the complainant in C.C.No.7661 of 2014 and he is the father of Dr.Pinky Vedavanam. Pinky was married to Dr.Saravanan Balagurusamy on 07.09.2003 at Chennai. Dr.Saravanan Balagurusamy married the petitioner Sathyakala Rajangam, while his first marriage is in subsistence. He had committed the offence of bigamy. The complaint under Section 494 IPC has been filed against Dr.Saravanan Balagurusamy and it is pending in CrI.M.P.No.155 of 2012 for taking cognizance. Dr.Saravanan Balagurusamy's second wife Sathyakala Rajangam and the witness for the second marriage were not added as accused in the said case. Now the first respondent could obtain more information and facts and identified that the petitioners have abetted the crime of bigamy committed by Dr.Saravanan Balagurusamy. Petitioner Sathyakala Rajangam is the second wife and petitioner Dr.S.Karthikeyan is the witness, who signed the Marriage Register maintained for the purpose of registration of marriage. Sathyakala Rajangam knowing fully well that Dr.Saravanan Balagurusamy was already married, has married him and abetted the bigamy marriage. This complaint is filed on behalf of Dr.Pinky Vedavanam.

3. Petitioner Mrs.Sathyakala Rajangam in CrI.O.P.No.472 of 2016 and petitioner Dr.S.Karthikeyan in CrI.O.P.No.831 of



2016 are accused 1 and 2 respectively in C.C.No.7661 of 2014.

4. Learned counsel for the petitioners submitted that the marriage between Dr.Saravanan Balagurusamy and Dr.Pinky Vedavanam was solemnised on 07.09.2003 at Chennai. After the marriage, the couple started the matrimonial life at UK. A female child named Shreya was born on 11.09.2004. There was a marital discard and difference of opinion started to surface between the couple in 2007. Dr.Saravanan Balagurusamy filed divorce petition in UK against Dr.Pinky Vedavanam and divorce decree was passed on 12.11.2009 and it was made absolute on 07.01.2010. This complaint was filed mainly on the allegation that Dr.Saravanan Balagurusamy filed a counter in O.P.No.140 of 2011 stating that subsequent to his divorce, he married one Sathya, which is a lawful marriage. Only on the basis of this averment, criminal case was filed against Dr.Saravanan Balagurusamy and his parents. This Court in Crl.R.C.No.89 of 2013 allowed the proceedings to continue only against Dr.Saravanan Balagurusamy and confirmed the dismissal of the case against V.Balagurusamy and B.Ramathilagam, parents of Dr.Saravanan Balagurusamy, passed by the learned Judicial Magistrate. With the same set of allegations, present complaint is filed against the petitioners for the offence under Section 494 r/w.107 IPC. Dr.S.Karthikeyan preferred Crl.O.P.No.22158 of 2014 against taking cognizance of case in C.C.No.7661 of 2014. This Court only quashed the summons issued against Dr.S.Karthikeyan, but upheld the taking of cognizance giving option to the respondent to obtain sanction as per the provision of Section 188 of Cr.P.C from the Central Government. The sanction now obtained and produced shows that the sanction was given without proper application of mind. In effect, no sanction was given for prosecuting the petitioner under Section 494 r/w.107 IPC.

5. Another submission of the learned counsel for the petitioners is that the order in Crl.O.P.No.22158 of 2014 reads that "As soon as such sanction is made available, the Metropolitan Magistrate shall hold inquiry and then proceed further with either under Section 203 Cr.P.C or under Section 204 IPC." It is further submitted that the learned Metropolitan Magistrate has not conducted enquiry as directed. Without conducting enquiry, he issued summons to the petitioners. The order in Crl.O.P.No.22158 of 2014 was passed on 09.12.2014. The adjudication order of Additional Mahila Magistrate Court dated 19.06.2015 shows that on production of xerox copy of sanction order for A2 along with new original order, summons was ordered to A1 and A2. This adjudication



order reflects that no enquiry under Section 202 Cr.P.C. It is also seen that after issuing summons on 19.06.2015, learned Magistrate examined witnesses on 04.09.2015 and 18.09.2015 as per the order of the High Court and again passed an order of issuing summons to A1 and A2 on 30.10.2015. It is again illegal and for this reason, the complaint is liable to be quashed.

6. The next important submission made by the learned counsel for the petitioners is that respondent filed a complaint in C.C.No.7255 of 2012 against Dr.Saravanan Balagurusamy and his parents. Learned Magistrate had dismissed the petition under Section 203 Cr.P.C. Against the said order respondent filed Crl.R.C.No.89 of 2013 before this Court. This Court found that there is a prima facie case made out against Dr.Saravanan Balagurusamy for filing the complaint and the complaint was set aside against his parents and directed the Court to proceed further against Dr.Saravanan Balagurusamy. Dr.Saravanan Balagurusamy filed Crl.A.No. 3167 of 2014 against this order and the Hon'ble Supreme Court while disposing the Crl.A.No.3167 of 2014 observed that "We make it clear that the trial Court while deciding the matter shall remain uninfluenced by any observations of the decree in question." It is submitted by the learned counsel for the petitioners that the present complaint in C.C.No.7661 of 2014 and the complete allegations made are almost identical, except certain portions with regard to the allegations made against Dr.S.Karthikeyan. Respondent could have included Dr.S.Karthikeyan in the earlier complaint itself. If a husband or wife marries another during the subsistence of previous marriage, it is only the husband or wife, who is liable to be prosecuted and not a spouse who was married again. When Sathyakala Rajangam cannot be punished for the offence under Section 494 IPC, it is also not legally possible to prosecute her for the offence under Section 494 r/w.107 IPC. In the said circumstances, second complaint in C.C.No.7661 of 2014 is not maintainable.

7. It is further submitted by the learned counsel for the petitioners that the alleged marriage certificate is the only material to substantiate the allegations of second marriage. The law applicable in this regard is Foreign Marriage Act, 1969, which occupy the field of marriage of citizens of India, who reside outside India. Any marriage between the Indians or one of them is the citizen of India should be done as per the procedures laid down under the Foreign Marriage Act, 1969. In the case before hand, the marriage certificate is not issued under Section 14 of Foreign Marriage Act, 1969. Therefore, the certificate relied on by the learned counsel for the respondent



cannot be considered. As per Section 23, the marriage certificate relied by the complainant/respondent cannot be recognized in India for the reason that it was not issued as per Section 78(6) of Indian Evidence Act. There is no specific allegation in the complaint as to the manner in which the marriage was conducted. Mere admission of an accused admitting the second marriage will not prove the offence of bigamy, unless the second marriage is independently proved.

8. Learned counsel for the petitioners relied on the following judgments:-

(i) Judgment reported in (2020) 5 SCC 378 (Samta Naidu and another ..vs.. State of Madhya Pradesh and another) is relied by the learned counsel for the petitioners as to the maintainability of second complaint. Though there is no bar to entertain the second complaint on the same facts even if the first complaint resulted in dismissal under Section 203 Cr.P.C, the second complaint can be entertained only in exceptional circumstances, such as,

(a) where the previous order was passed on incomplete record, or

(b) on a misunderstanding of the nature of the complaint, or

(c) the order which was passed was manifestly absurd, unjust or foolish, or

(d) where new facts which could not, with reasonable diligence have been brought in the previous proceedings.

However, it was also observed that,

"16. As against the facts in Shivshankar, the present case stands on a different footing. There was no legal infirmity in the first complaint filed in the present matter. The complaint was filed more than a year after the sale of the vehicle which meant the complainant had reasonable time at his disposal. The earlier complaint was dismissed after the Judicial Magistrate found that no prima facie case was made out; the earlier complaint was not disposed of on any technical ground; the material adverted to in the second complaint was only in the nature of supporting material; and the material relied upon in the second complaint was not such which could not have been procured earlier. Pertinently, the core allegations in



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both the complaints were identical. In the circumstances, the instant matter is completely covered by the decision of this Court in Taluqdar as explained in Jatinder Singh and Poonam Chand Jain. The High Court was thus not justified in holding the second complaint to be maintainable."

(ii) In Birla Corporation Limited ..vs.. Adventz Investments and Holdings Limited and others reported in (2019) 16 SCC 610, it is observed that,

83.Exercise of power under Section 482 Cr.P.C. envisages three circumstances in which the inherent jurisdiction may be exercised namely:-

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of court; and
- (iii) to otherwise secure the ends of justice. Inherent jurisdiction under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution.

84.. It is well settled that the inherent jurisdiction under Section 482 Cr.P.C. is designed to achieve a salutary purpose and that the criminal proceedings ought not to be permitted to degenerate into a weapon of harassment. When the Court is satisfied that the criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused, in exercise of the inherent powers, such proceedings can be quashed. In Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Others (1976) 3 SCC 736, the Supreme Court reviewed the earlier decisions and summarised the principles as to when the issue of process can be quashed and held as under:-

"5. Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find



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"6.

Explanation 2 to the section says that,

"Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to and the doing of that act." Thus, 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 section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder- of the invite. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the, third paragraph of section 107. "

(iv) The judgment of Hon'ble Supreme Court in CrI.A.No.2122 of 2009 in Pashaura Singh ..vs.. State of Punjab and others is relied to highlight the ingredients that are necessary to constitute an offence punishable under Section 494 IPC.

"8. Section 494, IPC, inter-alia, requires the following ingredients to be satisfied, namely, (i) the accused must have contracted first marriage; (ii) he must have married again; (iii) the first marriage must be subsisting and (iv) the spouse must be living. Insofar as present case is concerned the appellant's marriage with Kamaljeet Kaur was not subsisting on January 2, 2002 when he is said to have married second time. Pertinently before the High Court, along with



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reply, the complainant Balwant Singh annexed copy of an affidavit filed by Kamaljeet Kaur which states that she was not aware of the divorce proceedings filed by her husband Pashaura Singh. However, from this affidavit, it is apparent that her husband has obtained a divorce judgment. There is nothing in the affidavit that divorce judgment has been stayed or set aside. On the face of the allegations made in the first information report, therefore, ingredients of the offence under Section 494, IPC are not satisfied. "

(v) The order in CrI.O.P.No.2786 of 2017 in Saraswathi and others ..vs.. Sumathi is relied for the proposition that the definition of abetment under Section 107 IPC includes not merely instigation which is a normal form of abetment, but also conspiracy and aiding. Mere presence in the temple along with others cannot be a ground for abetment to be charged.

(vi) The judgment reported in 1982 CrI.L.J.1362 (Karuppiiah Servai and others ..vs.. Nagavalli Ammal) is relied for the proposition that "in a bigamy case, the second marriage as a fact that is to say, the ceremonies constituting it must be proved. Admission of marriage by accused is not evidence of it for the purpose of proving the marriage in adultery and bigamy case. Mere association of the accused persons, who are charged for an offence of abetment of the principal offender in the absence of any material to show that there was an instigation by the petitioner or that there was an intention either in aiding or in commission of the offence, it cannot be said that they have committed an offence of abetment."

9. It is the submission of the learned counsel for the respondent that the accused in these cases are different and the offences for which they are charged are also different. Petitioners are prosecuted for abetting the commission of offence of bigamy. Petitioner Sathyakala Rajangam by agreeing to marry Dr.Saravanan Balagurusamy and petitioner Dr.S.Karthikeyan by agreeing to stand as a witness and attesting the marriage certificate, knowing fully well that Dr.Saravanan Balagurusamy was already married to Dr.Pinky Vedavanam, have committed the offence punishable under Section 494 r/w.109 IPC. There is only a minor typographical error in the sanction order and that cannot be used for quashing the proceedings. The position with regard to quashing of criminal case is very well



settled by the Hon'ble Apex Court in its various pronouncements. When the first complaint was filed in C.C.No.7255 of 2012, respondent was not in possession of material evidence to prove the marriage between Dr.Saravanan Balagurusamy and Sathyakala Rajangam. Only after filing of the first complaint, respondent obtained marriage registration certificate and therefore, this complaint is filed against the second wife and the witness. Foreign Marriage Act, 1969 is not applicable to the facts and circumstances of the case. All the contentions raised by the learned counsel for the petitioners can be considered only in trial for the reason that prima facie case is made out for prosecuting the petitioners for the offences under Section 494 r/w.109 IPC. Thus, learned counsel for the respondent prayed for dismissal of these petitions.

10. Learned counsel for the first respondent relied on the judgment in Vijay Khanna ..vs.. Jambo Electronics Co. Ltd., and another reported in ILR 1994 2 Delhi 911 for the proposition as to the effect of sanction to prosecute obtained from the Central Government during the pendency of the proceedings, it is observed in this judgment that,

"(8) If the respondent has been able to obtain the sanction of the Central Government, u/s 188 of the Code of Criminal Procedure, as the said respondent claims, and which prima facie, the said respondent has been able to obtain, subject to what the petitioner may have to say with regard to it, the main ground of attack of the petitioner to the proceedings and the summoning order, based on lack of jurisdiction in a Court in Delhi, to entertain the complaint, would not appear to survive, even though it could not be said, even on the respondent's own allegation, that the complaint had been "filed" with the "previous sanction of the Central Govt." There is, however, good authority for the proposition that a sanction obtained during the pendency of the complaint would ensure for the purpose of the proceedings and would be enough to save the proceedings from being struck down as being without jurisdiction (1). It is, therefore, unnecessary for me to consider if a part of the cause of action arose within jurisdiction of this Court, by virtue of the telephonic communications, because such an exercise



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would be unnecessary if a valid sanction has been obtained by the respondent to institute the proceedings. It would, however, be open to the petitioner to satisfy the court below that no sanction as claimed, has been obtained or that the order of sanction, sought to be relied upon by the respondent, is otherwise invalid, should the said proceedings survive the challenge on the merits. "

(ii) With regard to the scope of enquiry under Section 202 Cr.P.C., it is observed in *Sunil Todi and others ..vs.. State of Gujarat* and another reported in 2021 SCC OnLine SC 1174 citing *Birla Corporation case*, that

42. In *Birla Corporation Ltd. v. Adventz Investments and Holdings* 24, the earlier decisions which have been referred to above were cited in the course of the judgment. The Court noted:

"26. The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 CrPC or whether the complaint should be dismissed by resorting to Section 203 CrPC on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202 CrPC, the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused."

(iii) On the scope of quashing the proceedings under Section 482 Cr.P.C., it is observed in *Amit Kapoor ..vs.. Ramesh Chander* and another reported in (2012) 9 SCC 460, as follows:-

27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us



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because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.

11. Considered the rival submissions and perused the records.

12. Perusal of the records shows that in CrI.O.P.No.22158 of 2014, this Court directed the learned Magistrate to hold enquiry and then proceed further either under Section 203 Cr.P.C or under Section 204 IPC. As pointed out by the learned counsel for the petitioners, immediately on production of xerox copy of sanction order, for prosecuting the second accused along with the original order, the learned Metropolitan Magistrate ordered issuance of summons to A1 and A2. Then the case was posted to 10.07.2015, 07.08.2015 and on 04.09.2015. It is not known



whether summons was issued to the accused/petitioners as per the order dated 19.06.2015 for the hearings on 10.07.2015, 07.08.2015 and 04.09.2015. It can be inferred that either summons have not been issued or summons issued was not served or summons issued was served, but the accused did not appear. The fact remains that the accused did not enter appearance for the hearings on 10.07.2015, 07.08.2015 and 04.09.2015.

13. The adjudication order dated 04.09.2015 reads that "PW.1 examined in preliminary enquiry as per the order of Hon'ble High Court". On 01.10.2015, PW.2 was examined in preliminary enquiry as per Hon'ble High Court Order. 30.10.2015 order reads that "Complainant absent. Petition filed and allowed. Records perused. Prima facie case made out. Offence under Section 494 IPC against A1 and 494 r/w.109 IPC against A2. Issue summons to A1 and A2." The case was adjourned to 27.11.2015, 14.12.2015, 19.01.2016, 19.02.2016 and 18.03.2016. Summons was not served on the accused for the hearing on 27.11.2015. Fresh summons was ordered on 14.12.2015, 19.01.2016 and 19.02.2016. When the case was posted on 18.03.2016, advocate entered appearance for A1 and A2. It implies that though summons was ordered on 19.06.2015, most probably summons was not actually sent to the accused. Realising that enquiry, as directed in CrI.O.P.No.22158 of 2014, was not conducted, learned Magistrate started examining witnesses and conducted preliminary enquiry on 04.09.2015, 18.09.2015 and 01.10.2015. Finding that prima facie case was made against the petitioners, ordered summons to accused. It is only a minor procedural lapse committed by the learned Magistrate. The fact is that the accused entered appearance before the Court only after the preliminary enquiry conducted from 04.09.2015 to 30.10.2015 and issuance of summons after finding a prima facie case against the petitioners. Order issuing summons on 19.01.2016 is only a procedural violation and that was set right by the subsequent preliminary enquiry conducted, as directed by this Court in CrI.O.P.No.22158 of 2014. Therefore, this Court finds no merit in the submission of the learned counsel for the petitioners that the enquiry as directed in CrI.O.P.No.22158 of 2014 was not conducted and there was an irregularity in taking cognizance cannot be accepted. Irregularity committed by the learned Magistrate is only a curable irregularity and it would no way affect the case.

14. Sanction order reads that "Now, therefore the Central Government in pursuance of the proviso to Section 188 of the Code of Criminal Procedure, 1973, is pleased to accord sanction for inquiry & trial, under Section 188 of Cr.P.C, 1973,



of the offences allegedly committed by the offenders, namely (i) Dr. Dr.Saravanan Balagurusamy, (ii) Mrs. Sathyakala Rajangam and (iii) Dr.S.Karthikeyan in the complaint C.C.No.7661 of 2014 registered at the learned X Metropolitan Magistrate at Egmore, Chennai, for the offence either under Section 203 of the Cr.P.C., or under Section 204 of the I.P.C. for taking cognizance of the said offence by a court of competent jurisdiction in India." It reads that sanction for prosecution was given for the offence either under Section 203 Cr.P.C or under Section 204 of IPC. Section 203 of Cr.P.C deals with dismissal of Criminal complaint. Section 204 of IPC deals with destruction of documents or electronic record to prevent it from production as evidence. It is true that there is no sanction given for the prosecution of the petitioners for the offence under Section 494 r/w.107 IPC. Despite issuing two corrigendums dated 26.05.2015 and 03.08.2018, the mistake had crept in the sanction order in omitting to mention section 494 r/w.107 IPC. Therefore, this Court finds that there is merit in the contention of the learned counsel for the petitioners that the sanctioning authority has not applied its mind before giving sanction.

15. Section 188 Cr.P.C prohibits the enquiry into or trial of an offence committed outside India, except with the previous sanction of the Central Government. Immediately on filing the complaint and receiving the summons, Dr.S.Karthikeyan approached the Court in Crl.O.P.No.22158 of 2014 claiming that C.C.No.7661 of 2014 is not maintainable for lack of sanction under Section 188 Cr.P.C. This Court directed that the respondent may obtain sanction from Central Government under Section 188 Cr.P.C and produce the same before the learned Magistrate for conducting enquiry under Section 203 Cr.P.C or under Section 204 IPC. Respondent had also taken steps for obtaining sanction. The sanction order received, as indicated earlier, did not mention about the offence under Section 494 r/w.107 IPC. It is seen that there were already two corrigendums issued for making corrections in the sanction order. For the mistake committed by the officials in the grant of sanction, the case of the respondent cannot be thrown out. Possibility of issuing another corrigendum by the sanctioning authority for incorporating the correct provision of law ie., Section 494 r/w.107 IPC in the sanction order cannot be ruled out before the enquiry or trial commences. If the respondent does not take any steps for correcting the sanction order, then it is open to the trial Court to pass appropriate orders including on the aspect of lack of sanction for prosecution for the offence under Section 494 r/w.107 IPC.



16. Most of the issues raised by the learned counsel for the petitioners are matters for evidence. The disputed fact ie., the issue with regard to conduct of marriage between Sathyakala Rajangam and Dr.Saravanan Balagurusamy is disputed fact and it has to be tried only during the course of trial by oral and documentary evidence to be produced by the parties. There is an open admission by Dr.Saravanan Balagurusamy in the counter filed in O.P.No.140 of 2011 that subsequent to his divorce he married one Sathya, which is a lawful marriage. He admitted that he divorced Dr.Pinky Vedavanam, then married Sathya and the marriage was a legal marriage. Irrespective of the marriage certificate, this admission matters. The question of proving the marriage is a matter for trial. Apart from this admission, there is a marriage certificate and the respondent should be given an opportunity to prove the marriage and that the certificate was given in connection with the marriage. Again it is a matter for trial. Petitioner Dr.S.Karthikeyan only challenged technical aspects of marriage and marriage certificate, but he has not denied that he was a part of the marriage party and that he stood as a witness to the marriage.

17. As of now, there is a prima facie material to show that Dr.Saravanan Balagurusamy had married one Sathyakala Rajangam and Dr.S.Karthikeyan stood as a witness to the marriage and attested the marriage certificate. There is also an issue as to whether the divorce of the marriage between Dr.Pinky Vedavanam and Dr.Saravanan Balagurusamy granted by Warrington County Court is valid or not. If the divorce granted by Warrington County Court is valid, then the second marriage between Dr.Saravanan Balagurusamy and Sathyakala Rajangam will be valid marriage and there is no cause for prosecuting the petitioners for the offence under Section 494 r/w.109 IPC. On the other hand, if the divorce granted by Warrington County Court annulling the marriage between Dr.Saravanan Balagurusamy and Dr.Pinky Vedavanam is not valid, then there is a cause for prosecuting the petitioners for the offence under Section 494 r/w.109 IPC. It is not known, as of now, whether the marriage between Dr.Saravanan Balagurusamy and Sathyakala Rajangam had been conducted in accordance with their personal law or under Foreign Marriage Act, 1969. Therefore, it is too early to decide as to the applicability of marital law in the absence of clear evidence on this aspect. The settled proposition of law is that the accused must establish that the second marriage was also conducted following the ceremonies under the Personal Law and in accordance with law. However, as said repeatedly, these are the matters for evidence during the trial of the case. At



the risk of repetition, it is reiterated that there is a prima facie evidence to take cognizance of the case for the offence under Section 494 r/w.109 IPC against the petitioners. The judgments relied by the learned counsel for the petitioners with regard to the impermissibility of the second complaint on the same cause of action, in the considered view of this Court, is not applicable to the present case, for the reason that the accused in other case (C.C.No.7255 of 2012) and in this case are different. Second complaint is not totally impermissible. When new materials had come to light, second complaint can lie. It is the submission of the learned counsel for the respondent that the evidence relating to the second marriage had been obtained only after the filing of the first complaint and therefore, the second complaint was filed against the second wife and the witness. In the peculiar facts and circumstances of the case, this Court is of the view that the second complaint, namely, this complaint is maintainable.

18. All these factual and technical issues can be raised by the petitioners, before framing charges after examination of relevant witnesses and even after framing of charges and the conclusion of trial. This being a private complaint case, the respondent has to make out a case for framing charges under Section 246 Cr.P.C. Before framing charges, respondent has to lead evidence under Section 244 Cr.P.C to make out a case for framing charges under Section 246 Cr.P.C. As already indicated, petitioners can place all the factual and legal issues before framing charges under Section 246 Cr.P.C or even after framing of charges when the trial proceedings are concluded. The proposition with regard to the quashing of criminal case is very well settled. The circumstances under which the quashing can be permitted are highlighted the judgment reported in (2012) 9 SCC 460 and referred supra. This Court finds that the uncontroverted allegations made in the complaint makes out a prima facie case for taking cognizance of the offence under Section 494 r/w.109 IPC and proceeding further.

19. That apart, it is seen from the order of this Court in CrI.O.P.No.22158 of 2014 filed for quashing this complaint, this Court, through the order of Hon'ble Mr.Justice S.Nagamuthu, upheld the taking cognizance of the case, but only quashed the summons issued against the accused under Section 204 Cr.P.C. The order upholding the taking cognizance is still in force. Therefore, petitioners cannot pray to seek quashing of the complaint. It was already discussed that there is some procedural lapse in conducting enquiry under Section 202 Cr.P.C



and that is only a curable defect and that was cured by the learned Magistrate by examining the witnesses and then the summons were sent to the petitioners. Admittedly, the prosecution sanction under Section 188 Cr.P.C does not indicate that sanction was granted for prosecuting the offences under Section 494 r/w.109 IPC. It is only a clerical error. However the respondent has to take steps to correct this clerical error, if no step is taken to correct this clerical error and for getting appropriate sanction order, it goes without saying that the enquiry or trial cannot be proceeded in this case. In the light of the above discussions, this Court finds that the prayer for quashing of criminal complaint in C.C.No.7661 of 2014 cannot be entertained and these petitions are dismissed.

20. In the result, these Criminal Original Petitions are dismissed. Consequently, Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS VI)

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Sub Assistant Registrar

mra
To

1. The X Metropolitan Magistrate
Egmore, Chennai,
2. The Public Prosecutor,
Madras High Court,
Chennai.

+4 ccs to Mr.R.Baskar Advocate sr31892 & 31889
+4 ccs to Mr.R.Shivakumar Advocate sr31743 & 31744

Crl.O.P.Nos.472 and 831 of 2016
and
Crl.M.P.Nos.196, 8671 of 2016
in Crl.OP.472/2016 and 397 &
8671 of 2016
in
Crl.OP.No.831 of 2016

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