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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14/6/2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. No.8796 of 2022

Jothi

... Petitioner/ Accused No.5

Vs

1. The Inspector of Police
AWPS, Omalur
Salem 636 455.

2. Nandini

... Respondents/Defacto
Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.208 of 2020 pending on the file of the Judicial Magistrate, Omalur, Salem District and quash the same as against the petitioner/A.5.

For Petitioner ... Mr.P.R.Krishnaraj

For Respondents ... Mr.A.Gokulakrishnan
Additional Public Prosecutor
for R.1.

O R D E R

This Criminal Original Petition has been filed to quash C.C.No.208 of 2020 pending on the file of the Judicial Magistrate, Omalur, Salem District.

2. Heard Mr.P.R.Krishnaraj, learned counsel for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor for the first respondent.

3. The petitioner is arrayed as A.5 in the final report. The only allegation made against the petitioner is that she married A.1, during the subsistence of marriage of A.1 with the defacto complainant.

4. At the outset, the very initiation of the prosecution under Section 494 of the Indian Penal Code is not attracted, as



against this petitioner, since the defacto complainant has not established that she is married to the petitioner's husband prior to the marriage of the petitioner. As far as the offences relating to marriage, no Court shall take cognisance of offence punishable under Chapter XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence. In the instant case, no such private complaint also filed.

5. That apart, it is not the case of the prosecution that A.5 had a husband through prior marriage at the time of her marriage with the husband of the defacto complainant. To attract the offence under Section 494 of the Indian Penal Code, only a person having a husband or wife living, by way of a prior marriage, who once again, marries in any case, such marriage is void, by reason of its taking place during the life of such husband or wife, shall be punishable under Section 495 of the Indian Penal Code. In the absence of any materials to substantiate the requirements under Section 494 of the Indian Penal Code, the prosecution initiated on the private complaint would not be maintainable.

6. In such a view of the matter, continuing the prosecution against the petitioner/A.5, is a futile exercise and it is nothing but an abuse of process of law.

7. Accordingly, this Criminal Original petition is allowed and C.C.No.208 of 2020, pending on the file of the learned Judicial Magistrate, Omalur, Salem District, as against the petitioner/A.5 is quashed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Judicial Magistrate, Omalur, Salem District
2. The Inspector of Police
AWPS, Omalur
Salem 636 455.



3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.R.Krishnaraj, Advocate, S.R.No.35789

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VG-II (CO)
CT/29/06/2022