



Crl.A.No.263 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :17.11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.A.No.263 of 2012

S.Shanthi

.. Appellant

/versus/

P.Jaganathan

.. Respondent

Prayer: Criminal Appeal has been filed under Section 378(ii) of Cr.P.C., to set aside the order of acquittal dated 23.11.2011 made in C.C.No.229 of 2007 on the file of the Judicial Magistrate No.1, Coimbatore.

For Appellant :Mr.P.Mathivanan

For Respondent :Mr.R.Vignesh

J U D G M E N T

This Criminal Appeal has been filed to set aside the order of acquittal dated 23.11.2011 made in C.C.No.229 of 2007 on the file of the Judicial Magistrate No.1, Coimbatore.



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2. It is the case where the complaint lodged against the respondent by the appellant herein alleging that while the appellant's marriage with the respondent was in subsistence, the respondent deserted her and their two children, married another lady by name Karuppayee @ Lakshmi and started living with her and begotten a son. Hence, a complaint has been filed under Section 494 of IPC.

3. To prove the complaint on the side of the complainant, four witnesses were examined and 9 Exhibits were marked. The respondent mounted the witness box and examined as DW1 and four Exhibits were marked on his defence.

4. The trial Court acquitted the respondent/accused on the ground that the complaint is filed belatedly after 11 years of the second marriage and the evidence regarding knowledge of the second marriage is contradictory. Further, proof of the second marriage also has not been established beyond doubt.



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5. Being aggrieved by the order of acquittal, the present appeal is filed on the ground that the offence under Section 494 of IPC is a continuous offence and has no time limit prescribed to set the law into motion. Apart from the eye witnesses (PW-2) and (PW-3), the complainant has produced the Electoral Voter List with their photos disclosing the name of the accused Jaganathan and the second wife Karuppathal as husband and wife and Manikandan as his son. Therefore, the learned counsel appearing for the appellant submitted that for unreasonable reasons, the trial Court has acquitted the respondent, in spite of overwhelming and unimpeachable evidence to prove the offence under Section 494 of IPC.

6. The learned counsel appearing for the respondent submitted that the contradictions between PW-1, PW-2 and PW-3 regarding the actual knowledge of the second marriage *per se* would show that this complaint has been given belatedly to extort money from the respondent. While the respondent has specifically denied his marriage with Karuppavee @ Lakshmi, the prosecution failed to prove the second marriage. The trial



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Court rightly declined to rely upon the Voter List without examining Official from Election Commission. Therefore, further submitted that even according to the complainant, her marriage with the respondent was solemnised in the year 1978 (13.09.1978), the respondent married Karuppayee @ Lakshmi illegally on 20.09.1995. PW-2 has stated that he saw the second marriage and within one month, he informed the father of the defacto complainant (PW-1) about the second marriage. However, she has not given the complaint till 2006. Further, while alleging that the respondent voluntarily retired from service in the year 2001 and spent all his retirement benefits to the his illegitimate second wife and son, she has not filed the complaint at least at that point of time, but only after lapse of 11 years, in the year 2006, the complaint has been given.

7. The learned counsel appearing for the respondent also pointed out that the complainant has not produced any photographs of the marriage or receipt from the temple, where the alleged second marriage got solemnised. Hence, without an iota of evidence regarding the second



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marriage, the complaint has been filed. Therefore, the trial Court has rightly dismissed the complaint.

8. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent. The deposition of witnesses and exhibits perused.

9. The reasoning given by the trial Court to acquit the respondent also considered. The complainant/appellant apart from the ocular evidence had relied up the Election Identity Card (Ex.P9) and Electoral Voter Lists (Ex.D3) and (Ex.D4), which were marked during the cross examination of DW1 who admits that those two lists are genuine and the photos are he, his wife and son. The Voter list maintained by the authorities of the Election Commission indicates that, the respondent Jaganathan, S/o Ponnusamy Mudaliar, his wife Karuppathal, W/o Jagannathan and Manikandan, S/o Jaganathan are residents of Kumaran Nagar, Ward No.14, Kottur (Special Grade Panchayat, Valparai Constituency). There is no reason to doubt the



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entry made in the Electoral Roll particularly, when there is no contra evidence to disprove the same and the entries in Ex.D3 and Ex.D4 admitted by the accused. These evidence have not been taken into consideration by the trial Court holding that the Officer from the Election Commission was not examined. In addition to Ex.P9, in the cross examination of the respondent, the complainant has also marked.

10. Ex.D3 and Ex.D4 is the Electoral Roll with photo of Valparai Constituency, wherein the name of the respondent's second wife Karuppathal and his son Manikandan and their photographs are available. The trial Court has declined to consider Ex.P9, Ex.D3 and Ex.D4 for the reason that the Officer of Election Commission was not examined. These three documents are photocopy of the documents issued by the Election Commission. The genuineness of this document is not doubted but the trial Court has rejected these three documents, has not reliable.



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11. In the instant case, the complainant had come to Court complaining that her husband, who is a government employee has deserted her and their two children, married another lady illegally and living with her. As a proof of the second marriage had produced the Electoral Roll. This evidence is rejected on a hyper technical reason that it has not been marked through the officer. These exhibits are part of a record maintained by the Election Commission. It is presumed to be genuine and the secondary evidence is admissible under the Indian Evidence Act, 1872, it being a public document. Further the same has been admitted by the respondent and marked in the cross examination. Having admitted the genuineness of the entry found in the document, the Court cannot decline to accept the content of the document.

12. Thus, the error in application of law and appreciation of evidence is palpably found in the judgment. In the light of the overwhelming evidence that the respondent has married another lady, while the first marriage in subsistence, the offence under Section 494 of IPC is



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squarely attracted. Therefore, the trial Court judgment is set aside. Charge under Section 494 of IPC found to be proved.

13. The respondent is present today before this Court and he was informed about the conviction. Time granted to reflect on sentence.

14. The matter is adjourned to 22.11.2022 “for questioning of sentence”.

17.11.2022

Index:yes/no
speaking order/non speaking order
ari
To :

The Judicial Magistrate No.1, Coimbatore.



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DR.G.JAYACHANDRAN,J.

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