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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders RESERVED ON : 10.06.2022

Orders DELIVERED ON : 17.06.2022

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.O.P.Nos.18663, 26331, 21022 & 23333 of 2018
and

Crl.M.P.Nos.13043, 13044, 11412, 15142 & 9853 of 2018

1.Najma Begam
2.Shahul Hameed

... Petitioners in Crl.O.P.No.18663 of 2018

Haji.Hamja Mohideen Malimar

... Petitioner in Crl.O.P.No.26331 of 2018

1.A.S.Jesima Yasmine
2.Shahul Hameed Bhadhusa
3.Hadhiya Beevi
4.Haja Halid Maricar
5.Najamudheen

...Petitioners in Crl.O.P.No.21022 of 2018

A.Sheik Dawood

... Petitioner in Crl.O.P.No.23333 of 2018

Vs.

Mohammed Al Amin
Rep.by Power of Attorney,
Mohammed Ashraf,
No.4, 1st cross, Ganapathy Nagar,
Karaikal.

... Respondent in all
Crl.O.Ps.

COMMON PRAYER: Criminal Original Petitions have been filed under Section 482 of Cr.P.C, to call for the records and quash all proceedings in C.C.No.161 of 2018 on the file of the Judicial Magistrate No.II, Karaikal in so far as the petitioners are concerned.

For Petitioners : Mr.N.A.Nissar Ahmed
in all Crl.O.Ps

For Respondent : Mr.R.Sreedhar
in all Crl.O.Ps



COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in C.C.No.161 of 2018 on the file of the Judicial Magistrate No.II, Karaikal in so far as the petitioners are concerned.

2.Crl.O.P.No.21022 of 2018 has been filed by A1, A4, A5, A6 and A8. A1 is the wife of the petitioner; A2 is the mother of A1; A3 is the father of A1; A4 is the second husband of the petitioner; A6 is the neighbour. A9 is the Townkazi.

3.On 02.06.2013, the respondent herein had married the first petitioner's daughter namely A.S.Jesima Yasmine as per Muslim Law and the respondent treated the 1st petitioner with physical and mental cruelty and forced her to dispose of her 40 sovereigns jewels and property thereby compelling her to file a suit in O.S.No.296 of 2015 on the file of Principal District Munsif Court, Karaikal, for divorce against the respondent herein. By a judgment and decree dated 25.11.2015, the learned Judge has decreed the said suit by dissolving the marriage between the first petitioner and the respondent. Thereafter, pursuant to the Civil Court decree, the Government town Khazi has opined that the first petitioner ought to maintain iddat for a period of three months after divorce had been granted by Court and thereafter, she was eligible to get another marriage vide his opinion dated 28.01.2016. Thereafter, on 01.05.2017, the 1st petitioner's daughter married one, Shahul Hamid Bathusha, the 3rd petitioner herein, who was arrayed as A4 and marriage certificate was issued on 23.05.2017.

4. The private complaint given by the first respondent herein has been taken on file in C.C.No.161 of 2018 before the learned Judicial Magistrate No.II, Karaikal and summons were also issued. Challenging the said summons, all these Criminal Original Petitions have been filed.

5. The learned counsel for the respondent/husband would submit that two suits have been filed by the husband before the civil Court in O.S.No.289 of 2015 for restitution of conjugal rights, while so O.S.No.296 of 2015 has been filed by the wife for dissolution of marriage. The suit filed by the husband in O.S.No.289 of 2015 was dismissed for default on 04.03.2016. The suit filed by the Wife in O.S.No.296 of 2015 was decreed exparte on 25.11.2015. Subsequently, the husband filed I.A.No.448 of 2016 for restoration of suit in O.S.No.289 of 2015 with the petition to condone the delay of 61 days and another I.A.No.449 of 2016 was filed to set aside the order dated 25.11.2015 passed in O.S.No.296 of 2015, before the civil Court. Subsequently, on transfer, the said Interlocutory Applications were renumbered as



I.A.Nos.2 & 3 of 2019. Further, the husband has also filed a private complaint on 24.07.2017. On the date of filing of the private complaint, the Interlocutory Applications filed for restoration of the suit, were dismissed for default and to set aside the exparte order has also been pending.

6. Per contra, the learned counsel for the accused/petitioner in CrI.O.P.No.21022 of 2018 would submit that even before the filing of the private complaint, daughter of the 1st petitioner got remarried on 01.05.2017, pursuant to the civil Court's order dated 25.11.2015. Though the private complaint was initially filed under Sections 494, 495 & 496 r/w 34 I.P.C, subsequently it has been scrolled out.

7. From the records, it reveals that the above private complaint by the husband was after the second marriage after filing petition to set aside the exparte decree along with the petition to condone the delay for restoration of the suit. It appears that all the petitions have been dismissed by the competent Civil Court (Family Court), Karaikal.

8. It remains to be stated that by virtue of the civil Court decree dated 25.11.2015, the marriage between the first accused and the private complainant stands dissolved. She had also taken opinion from the Government Town Khazi and as per the opinion given by the said Khazi, he was eligible to get remarry and after on 01.05.2017, the first accused has married the third petitioner herein and the Marriage Certificate (A4) was issued on 23.05.2017.

9. On the date of the filing of the private complaint, the marriage between the private complainant and the third petitioner duly stands dissolved by a competent Civil Court decree and after observing the iddat period of three months and also waited for more than a year, divorce had been granted by a Court. She remarried the 4th accused on 01.05.2017. Therefore, on the date of filing of the private complaint, the first accused is not the legally wedded wife of the private complainant, since the marriage was not dissolved. On the date of the marriage of the first accused with the 4th accused on 01.05.2017, the said decree of divorce was still in force and the same was not set aside, which continues till date. Hence, I do not find that on the date of filing of the private complaint, the private complainant is not the legally wedded wife and he is a divorced husband and hence, there is nothing on record to show that the averments made therein has any substance and the continuation of the trial is nothing but abuse of the process of law and hence, I am of the considered view that the private complainant in C.C.No.161 of 2018 is liable to be rejected.



10. Accordingly, all these criminal original petitions are allowed and C.C.No.161/2018 on the file of the Judicial Magistrate No.II, Karaikal stands quashed. Consequently, connected Crl.M.Ps are closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nvi

To

1.The Judicial Magistrate No.II, Karaikal.

+1cc to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.36767

+1cc to Mr.R.Sreedhar, Advocate, S.R.No.37764

Cr1.O.P.Nos.18663, 26331, 21022 & 23333 of 2018 and
Cr1.M.P.Nos.13043, 13044, 11412, 15142, & 9853 of 2018

AJB (CO)
CT/05/07/2022