



Crl.O.P.No.14010 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2022

CORAM

THE HON'BLE MS. JUSTICE R.N.MANJULA

Crl.O.P.No.14010 of 2021

and

Crl.MP.No.7632 of 2021

Ilayarani

... Petitioner /Accused-A2

Vs.

1.The State,

rep. by the Sub-Inspector of Police,

AWPS, Arani,

Thiruvannamalai District.

Crime No.2/2021

... 1st Respondent/ Complainant

2.Muthamizhselvi

... 2nd Respondent/ Defacto Complainant

Prayer:- This Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records pertaining to the Final Report, in C.C.No.36 of 2021 pending on the file of the Judicial Magistrate Court in Arani, Thiruvannamalai District and quash the same.

For Petitioner : Mr.Swami Subramanian

For Respondents : Mr.A.Damodaran

Additional Public Prosecutor for R1

ORDER



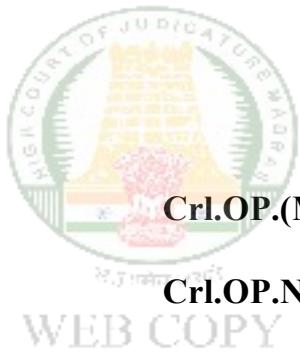
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This Criminal Original Petition has been preferred to call for the records in CC.No.36 of 2021 on the file of the learned Judicial Magistrate, Arani, Thiruvannamalai District and quash the same as against the petitioner.

2. The petitioner is the second accused in this case. The case of the prosecution is that the first accused who is the husband of the defacto complainant, married the petitioner/second accused even when her marriage with the first accused was in subsistence. When the first accused was inquired by the defacto complainant in this regard, he abused her in filthy language, assaulted and also threatened her.

3. Heard Mr.Swami Subramanian, learned counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor for the first respondent.

4. The learned counsel for the petitioner submitted that all the allegations have been made by the second respondent/ defacto complainant only against the first accused and as against the petitioner no case has been made out for the offences under Sections 294(b), 323, 494, 498A & 506(i) of IPC. He further submitted that even for the offence under Section 494 IPC, the petitioner cannot be impleaded as an accused. In support of his above contention he cited the decisions of this Court rendered in **Crl.OP.(MD) No.7122 of 2013** [A.Pandiammal Vs.The Inspector of Police, All Women Police Station, Thiruparankundram, Madurai and another],



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Crl.OP.(MD).No.10204 of 2021 [Habeeb Nisha Vs. Nasreen Banu and another] and

Crl.OP.No.20395 of 2017 [S.Geetha Vs.The State of Tamil Nadu and another].

5. On the complaint given by the second respondent/defacto complainant, a case has been registered in Crime No.2 of 2021 for the offences under Sections 494, 498(A), 294(b), 323 and 506(i) IPC. The very allegation of the second respondent/defacto complainant is that she was married to the first accused on 07.12.2008 and out of their wedlock she gave birth to a female child. The first accused went to Villupuram in search of job. The first accused and the defacto complainant were living together by shifting their residence to Villupuram. During that time the first accused developed some illegal intimacy with the second accused and the defacto complainant had objected their relationship. After some time the first accused shifted the family from Villupuram to his native place and he alone went to Chennai in the pretext of seeking job for him. Thereafter the defacto complainant came to know from her sister-in-law one Mahalakshmi that the second accused had shared the photographs of marriage with the first accused. Only then she came to know about the marriage of the first accused and second accused. When the defacto complainant questioned the first accused about this, he abused and assaulted her and also intimidated her.

6. Though the allegations of abusing the defacto complainant with filthy language coupled with assault and threat only relates to the first accused, the relevant Penal Provision that are invoked against the second accused who is the petitioner



herein is only for the offence under Section 494 IPC.

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7. The learned counsel for the petitioner submitted that even for the offence under Section 494 of IPC, the petitioner cannot be prosecuted but only the first accused should be implicated. For the sake of clarity Section 494 of IPC is extracted hereunder:

Section 494 in The Indian Penal Code

494. Marrying again during lifetime of husband or wife.—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(Exception) —This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

8. So far as the first accused is concerned, he was already married and his marriage with the defacto complainant was also in subsistence at the time of the alleged marriage between the first accused and the second accused. The second accused is said to be a spinster and hence, it is submitted that no offence under Section



494 IPC can be made out against her. After completing the investigation, the charge sheet has been filed against both the accused. As per the charge sheet the first accused has been charged for the offences under Sections 494, 498A, 294(b), 323 and 506(i) of IPC. As against the second accused the charge sheet has been filed for the offence under Sections 494, 294(b) and 506(i) IPC.

9. The records would show that as against the petitioner / second accused the offences under Sections 294(b) and 506(i) of IPC will not be made out. Even as per the complaint made by the defacto complainant, those allegations in respect of the said offences were made only against the first accused and not against the second accused.

10. It is true that the photographs shared by the second accused to the cell phone of the sister in law of the defacto complainant is the marriage photographs between herself which the first accused can form a basic material on which the accused can be charged for the offences under Section 494 IPC. It is to be seen whether the second accused can be charged for the offence under Section 494 of IPC within the meaning of Section 494 IPC.

11. It is seen that the second accused is a spinster and she did not have any spouse with whom any marriage is subsisting at the time of occurrence. Even though the second accused cannot be simply charged for the offence under Section 494 of IPC, she could still be charged for the offence under Section 494 read with 109 IPC.



Because the second accused can very well abet the first accused to commit the offence of bigamy punishable under Section 494 IPC. The first accused cannot commit the offence under Section 494 IPC, without the cooperation of the second accused. Just because the Penal Provisions have not been stated correctly in the charge sheet filed by the first respondent police, the Court cannot ignore the relevant Penal Provisions made out as against the petitioner/ second accused.

12. In this regard it is also relevant to refer the judgements cited by the learned counsel for the petitioner. In the judgement of the Madurai Bench of this Court in ***Crl.OP.(MD) No.7122 of 2013 [A.Pandiammal Vs.The Inspector of Police, All Women Police Station, Thiruparankundram, Madurai and another]*** it is seen that the materials available in that case did not make out a prima facie case to prove the marriage between the first and second accused. Hence it was held that the offence under Section 494 IPC is not attracted.

13. In the judgement of the Madurai Bench of this Court in ***Crl.OP.(MD).No.10204 of 2021 [Habeeb Nisha Vs. Nasreen Banu and another]*** it is held that in view of the personal law, second marriage is not prohibited and hence it is not an offence. In the said case, it is held that to prove the second marriage as the offence the marriage should be proved as a void marriage. The above case has dealt the technical issue to decide the case and not merely on factual aspects.



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14. So far as the judgement in ***Crl.OP.No.20395 of 2017 [S.Geetha Vs.The State of Tamil Nadu and another]*** it was held that an already subsisting marriage as against the second accused should also be proved in order to charge the second accused also for the offence. The said judgement has to be seen in the context of its own facts.

15. In the case on hand, there are sufficient materials available for the prosecution to subject the accused under trial to prove the offence under Section 494 IPC. Only when the defacto complainant is examined with the relevant materials collected by the prosecution during investigation, it will come to light whether there was a second marriage between the first accused and the second accused and whether the accused are punishable for the offences under Sections 494 of IPC and 494 r/w 109 IPC. So I find this is not a case where the powers of this Court should be exercised under Section 482 Cr.P.C to quash the case against the second accused for the reason that she was a spinster at the time of the alleged marriage with the first accused. Because the trial Court can at any time alter the charges and frame suitable charges. Only during the course of the trial it can be established whether the second accused had the knowledge about the subsisting first marriage of the first accused with the defacto complainant at the time of the alleged occurrence or whether the alleged occurrence itself is true or not.



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R.N.MANJULA, J.

jrs

In view of the above stated reasons, this Criminal Original Petition is **dismissed**. Consequently, connected miscellaneous petition is dismissed.

19.10.2022

Speaking/Non-speaking
Index : Yes/No

jrs

To

1. The Judicial Magistrate, Arani,
Thiruvannamalai District
2. The Sub Inspector of Police,
AWPS, Arani,
Thiruvannamalai District
3. The Public Prosecutor,
High Court of Madras.

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