



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:12/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.13210 of 2019

and

Crl.MP(MD)No.8108 of 2019

Sivakumar

: Petitioner/A1

Vs.

Yasodha Sivakumar

: Respondent/
De-facto complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the case in CC No.139 of 2019 on the file of the Judicial Magistrate, Tirupattur, Sivagangai District and quash the same.

For Petitioner : Mr.B.Prahalad Ravi

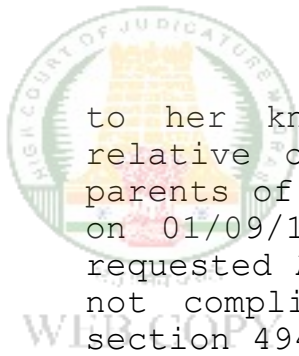
For Respondent : Mr.Susanna Prabhu

O R D E R

This petition has been filed seeking quashment of case in CC No.139 of 2019 on the file of the Judicial Magistrate Tirupattur, Sivagangai District.

2.The respondent has lodged a complaint with the following allegations:-

The complainant is aged about 58 years. The 1st accused is aged about 72 years. A2 is aged about 50 years. The marriage between the de-facto complainant and A1 was performed, on 01/09/1977. After the marriage, they lived together as husband and wife in the ancestral house situated at Theni and a female child was also born, on 24/09/1978. During that time, A1 used to come with drunken mood and beat her. Even after the birth of the female child, it continued. Sometime in 1987, she was severally beaten and she was forced out of the matrimonial home and thereafter, she is living in her parental home from 2009 at Chennai. Her belongings, such as gold and silver articles, left in the matrimonial home. Sometime in 1992, A1 married the second accused without the knowledge of the complainant. It came



to her knowledge only after several years. A2 is the distant relative of A1. A2 also knew about the factum of marriage. The parents of the accused also attended the marriage between A1 and A2, on 01/09/1997. At that time, the complainant and her parents, requested A1 to return the jewels and silver articles. But that was not complied. So, the accused have committed the offence under section 494 IPC r/w 109 IPC.

3. Seeking quashment of the same, the petitioner/A1 has preferred this petition.

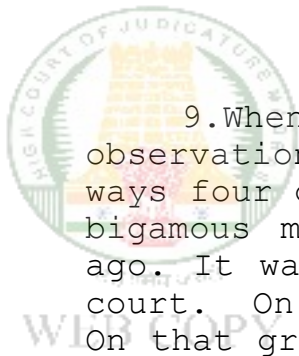
4. Heard both sides.

5. It is very unfortunate case, not only for the petitioner, but also for the respondent. The marriage between the petitioner and the complainant took place, on 01/09/1977. As mentioned above, within a year, a female child was born to them. The dispute started after that and now we are in the 44th year of marriage. So far the dispute has not resolved and every endeavour was also made by this court to settle the issue not with regard to bigamous, but with regard to easing the desperate circumstances of the wife and the only daughter.

6. When the matter was heard by this court, it was argued by the learned counsel appearing for the respondent in a persuasive manner that absolutely the respondent and her daughter are penniless and the daughter is now 44 years and remains unmarried. Finding that it is the duty of the petitioner to make every possible endeavour to arrange the marriage and maintain her, this matter was referred to mediation, but it could not be settled for one reason or other.

7. At the time of argument, the learned counsel appearing for the respondent submitted that the petitioner wants to settle the respondent for a meagre amount of maintenance, which is not accepted by her and for the past 44 years, the petitioner has not taken any care of the respondent and the child. But the learned counsel appearing for the petitioner would submit that as a dutiful father, he took possible endeavor to get the child married. But whenever alliance is suggested, the respondent and her daughter was in the habit of rejecting the proposal and that was the reason for the present situation.

8. Now whatever it may be, it is the duty of the petitioner to maintain the respondent and the child and get her married properly. No excuse is available morally or legally to escape from that liability. Even at the time of final argument, this court asked the petitioner, even now time is available to resolve the issue of maintenance, settlement etc. But the very same reason was given by the learned counsel appearing for the petitioner that it has gone out of his hands. So the matter was heard on merits.



9. When the matter was heard by my predecessor, there is an observation on 16/10/2020 to the effect that the parties have parted ways four decades ago; The petitioner is aged about 72 years and the bigamous marriage is also said to have taken place some 28 years ago. It was argued that it is nothing, but abuse of process of the court. On that ground, *prima facie* ground was found to be made out. On that ground, further proceedings have been stayed by this court, even though the original petition was filed on 17th September 2019. It was submitted that the criminal case was filed only when a suit for partition was filed by the daughter. So the learned counsel appearing for the petitioner would submit that this case comes under the 7th category as set out by the Hon'ble Supreme Court in **Bhajan Lal's** case, which would run thus:-.

"(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;



(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

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10. In reply to the argument of delay, the learned counsel appearing for the respondent would submit that the factum of the second marriage was brought to his notice only when the written statement was filed by the petitioners in O.S.No.47 of 2017. That suit was filed by the daughter of the parties by name Arthi for partition of the half share, rendition of accounts and permanent injunction etc. That plaint was verified on 13/07/2017. Written statement was verified, on 18/01/2018. So according to the respondent, only in the written statement, the petitioner has stated that he married one Parimala in 1992 and the factum of marriage was also known to the respondent and there was no objection on the side of the respondent at the time, since the respondent left the matrimonial home in 1987, only after a lapse of five years, the second marriage was performed. So according to the respondent, immediately the private complaint was filed on 12/09/2018. So after that, this petition has been filed in 2019 and has been kept pending all these years without any conclusion. So according to her, no delay can be attributed to the respondent and on the ground of delay, the illegality committed by the petitioner should not be permitted to go unpunished.

11. Now there is a clear admission on the part of the petitioner to the effect that he married the above said Parimala, after the alleged desertion by the respondent. But he ought to have pursued by legal process. But that was not done. So *prima facie*, it is seen that it is nothing, but bigamous marriage.

12. The fact remains that as mentioned earlier, the respondent remained silent for about 30 years. Now the learned counsel appearing for the respondent would submit that she was under the impression that there was no marriage (2nd marriage) with the above said Parimala. Such a sort of contention cannot be accepted for the simple reason that the children were born to the petitioner and the above said Parimala and now it has been informed to the court that they also settled in life, after the marriage. According to the petitioner, the delay and the passive act of silence will disentitle the respondent to initiate the criminal proceedings.

13. The learned counsel appearing for the petitioner would straightway rely upon the judgment of the Punjab and Haryana High court in the case of ***Gurmail Kaur and others Vs. Gurmail Singh (Criminal Misc No.36884 of 2014), dated 14/11/2014***, wherein it has been observed that even though mere delay cannot be the ground for quashment of the criminal proceedings, but when there is gross and



long delay of years, that can be the ground for quashing the criminal proceedings.

14.Only in response to this argument, the learned counsel appearing for the respondent has submitted that only in 2018, the 2nd marriage was brought to her notice. So the learned counsel appearing for the respondent would rely upon the judgment of the Hon'ble Supreme Court in the case of **Chand Dhawan Vs. Jawahar Lal and others (1992 AIR 1379)** for the purpose of argument that the inherent powers of this court cannot be invoked, when serious allegations are made in the complaint with regard to the performance of the second marriage. So according to her, in the light of the admission made by the petitioner that he performed the second marriage even during the subsistence of the first marriage, no interference is required at the instance of this court. It is also pointed out that the documents, which are proposed to rely on by the petitioner cannot be taken into account at this stage, since those factors are to be proved through proper evidence.

15.No doubt, the disputed question with regard to those aspects can be gone into only at the time of trial. But here, as mentioned earlier, there was a long delay of 45 years in prosecuting the petitioner. Even though, the crime will not die.

16.The learned counsel appearing for the petitioner in response to the argument would rely upon the judgment of this court in the case of **J.Gnanakumar Vs. V.P.Rajan and three others (Crl.OP(MD) Nos.4073 of 2009 and 5918 and 5942 of 2009, dated 20/08/2013)**, wherein similar situation arose, there was desertion on the part of the wife for about 37 years prior to the complaint. Noting that the desertion on the part of the wife for several decades, the above said private complaint was quashed by this court. But the factual aspects are entirely different. Only for the limited purpose of showing the cause of delay, the judgment has been cited.

17.In the counter, the respondent has stated that she was under the wrong impression that the petitioner has not married the Parimala and as per the caste customs, the above said Parimala was living with this petitioner. But I am unable to agree this line of submission.

18.As mentioned above, three children were born to the above said Parimala and the petitioner and they were settled in life. At this length of time, it is nothing, but *mala fide* exercise of criminal prosecution. Now the petitioner is aged about 70 years and the respondent is aged 58 years, the continuation of the criminal proceedings against the petitioner will amount nothing, but abuse of process of court and law. So, as settled by the Hon'ble Supreme Court in **Bajan Lal's** case, for the reasons stated above, this petition is liable to be allowed.



19. In the result, this criminal original petition is **allowed**. The impugned CC No.139 of 2019 on the file of the Judicial Magistrate Tirupattur, Sivagangai District is quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

The Judicial Magistrate,
Tirupattur, Sivagangai District.

+2 CC to M/s.B. PRAHALAD RAVI, Advocate (SR-19105[F] dated
18/04/2022)

**Crl.OP(MD)No.13210 of 2019
12.04.2022**

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