



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:25/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.18549 of 2018

and

Crl.MP(MD)No.8302 of 2018

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1.Kameela
2.Sivaraman Nadar : Petitioners/A2 to A3

Vs.

Metrilada : Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.178 of 2013 on the file of the Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District and quash the same.

For Petitioners : Mr.R.Murugan
For Respondent : Mr.R.Ilayaraja

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.178 of 2013 on the file of the Judicial Magistrate No.II, Kuzhithurai, Kanniyakumari District.

2.The case of the prosecution in brief:-

It is a private complaint. The marriage between the de-facto complainant, who is the respondent herein and the first accused was performed on 07/02/2000 as per the Christian Customary Rites. At the time of marriage, the respondent was provided with sufficient sridhana, jewels, household articles, etc. At the time of marriage the respondent was undergoing graduation in Muslim Arts College, Thiruvithancode, Kanyakumari. After the marriage, she was living in the matrimonial home. In that house, A2 to A5 were also living. Later, the accused persons started ill-treating the respondent stating that she is not fit for matrimonial life and procreation of child. They also harassed the respondent stating that they are arranging second marriage to A1 for getting more dowry. She was driven out of the house in the last month of 2010.

3.Now on 02/10/2012, A2 to A5 have arranged marriage for A1 with A6 as per the Hindu Customary rites. So conducted marriage as per the Hindu customary rites. A2 to A5 distributed invitation to the relatives and the villagers. Even though, it was objected by



the respondent and her family members, the marriage was performed. The second marriage was also registered, on 29/10/2012. So with these allegations, the respondent filed a private complaint before the trial court, which was taken on file in CCNo.178 of 2013 by the Judicial Magistrate No.3, Karaikudi.

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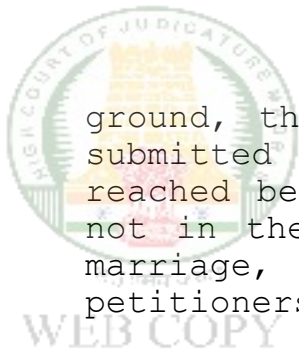
4. Seeking quashment of the same, A2 and A3 have preferred this quash petition mainly on the ground that even as per the allegation made by the respondent, the alleged second marriage, which was alleged to have been performed between A1 and the 6th accused under the Hindu customary rites. But the parties belong to Christian community. The marriage alleged is a void marriage. So, the question of second marriage does not arise and any of the ingredients under section 494 r/w 34 of IPC is attracted. The second contention is that only bald allegations have been made against these petitioners.

5. Heard both sides.

6. During the course of argument, it was brought to notice of this court that the first accused died. So the offence against him abated and the co-accused namely Catharin Sara and Albert Rabara, who were arrayed as A4 and A5 filed Crl.OP(MD)No.17521 of 2014 before this court and that was allowed, on 20/09/2019. The observation made by this court in the above said petition is relevant for our discussion now. Finding that prima facie the husband of the respondent was no more. For the purpose of purchasing peace, on the basis of the above said case, an offer has been made to the effect that they will provide Rs.1,00,000/- to the respondent. That offer was also accepted by this court and directed to hand over the Demand Draft within a week from the date of receipt of the copy of the order and an undertaking affidavit was required to be filed. In respect of the land, that was gifted by the father of the respondent and the father-in-law and in favour of the respondent herein. It was also raised that the details with regard to the land must be furnished by the respondent to the learned counsel appearing for the petitioners. So with the above said observation, the proceedings against A4 and A5 have been quashed.

7. It is also observed that so far as the other accused persons namely A2, A3 and A6 are concerned, they have not filed any quash petition. So the trial court was directed to complete the trial process within a period of six months from the date of receipt of a copy of the order. It is seen that already an offer was made by the co-accused in favour of the respondent.

8. Whether the amount was received or not is not clear on record. During the course of argument, it was pointed out by the learned counsel appearing for the respondent that the jewels belong to the respondent is in the hands of the petitioners and if the jewels are handed back, she is ready for compromise. So on that



ground, the matter was adjourned to report the compromise. It was submitted at the time of final hearing that no compromise was reached between the parties. The petitioners stated that they have not in the custody of the above said jewels. Because, after the marriage, the husband and wife were residing separately and the petitioners never lived with them.

9.It is further submitted that in respect of the house property, which was given by the father-in-law of the respondent in favour of her and her husband, a portion may be handed over to her. But the learned counsel appearing for the petitioners would submit that in the property, which was gifted by the father-in-law, the mother of A1 is also entitled to a share. More-over, the respondent is also having separate house. But this fact was objected by the learned counsel appearing for the respondent stating that only landed property was gifted by the father and no properties were available to her. But whatever, it may be now the parties are not coming to the terms.

10.So the learned counsel counsel for the petitioners has submitted that matter can be disposed on merit. According to the learned counsel appearing for the petitioners, only bald allegations have been made against the petitioners. Since A1 also died, the cause of action also does not survive. Since the second marriage is a void one, section 494 IPC is not attracted against the petitioners. So for the above said argument, he relied upon the judgment of the Hon'ble Supreme court, reported in the case of Bhaurao Shankar Lokhande and another Vs. State of Maharashtra and another (1965)AIR (SC) 1564, wherein it has been held that the second marriage, which is alleged must be valid marriage. Suppose the second marriage is not valid one, the offence is not attracted. The relevant observation may be extracted hereunder:-

"3.Section 494 I.P.C. reads :

"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."

Prima facie, the expression 'whoever.... marries' must mean 'whoever marries-validly' or 'whoever.... marries and whose marriage is a valid one'. If the marriage is not a valid one, according to the law applicable to the parties, no question of its being void by reason of its taking place during the life of the husband or wife of the person marrying arises. If the marriage is not a valid marriage, it is no marriage in the eye of law. The bare fact of a man and a woman living as



husband and wife does not, at any rate, normally give them the status of husband and wife even though they may hold themselves out before society as husband and wife and the society treats them as husband and wife."

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11.No doubt, as observed by the Hon'ble Supreme court, the second marriage must be also be valid one. The learned counsel appearing for the respondent would submit that since the parties belong to Christian community and subsequent marriage has been performed by following the Hindu customary rites, it is not valid under law. But there is a specific allegation in the complaint that the marriage was performed by following Hindu rites. Whether there was any conversion on the part of A1 before performing the disputed marriage is the question of fact, which got to be decided during the course of trial. The word 'jGtp" requires proper interpretation, which involves the factual consideration.

12.In the light of the above facts, I am of the considered view that since the factual issue is also involved, it is not proper on the part of this court to quash the criminal proceedings.

13.In the result, this criminal original petition is **dismissed**. Considering the fact that it is the matter of the year 2013 and it is dragged on for more than 8 years, without any progress, there shall be a direction to the trial court to comply the order that has been passed by this court in Crl.OP(MD)No.17521 of 2014. Considering the age of the petitioners, their personal appearance is dispensed with before the trial court, within 15 days from the date of receipt of a copy of this order, the petitioners must appear before the trial court and file an undertaking affidavit that they will appear as and when required by the court and they must ensure that they are properly represented by an Advocate. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

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To

The Judicial Magistrate No.II,
Kuzhithurai,
Kanniyakumari District.

+1 CC to M/s.R.ILAYARAJA, Advocate (SR-14679[F] dated 25/03/2022)

+1 CC to M/s.R.MURUGAN, Advocate (SR-14745[F] dated 28/03/2022)

Crl.O.P. (MD) No.18549 of 2018
25/03/2022

SVN(CO)

KB(27.04.2022) 5P 4C