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Crl.O.P.No.2039 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.2039 of 2021
and Crl.M.P.Nos.1130 & 1131 of 2019

M.Kamala

...Petitioner

Vs.

V.Punitha

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the case in C.C.No.23 of 2021, on the file of the Additional Mahila Court (Magistrate Level), Erode, quash the same by allowing this criminal original petition.

For Petitioner : Mr.R.Prabakaran

For Respondent : Mr.M.Karthik

ORDER

This petition has been filed to quash the proceeding in C.C.No.23 of 2021, on the file of the Additional Mahila Court (Magistrate Level), Erode, thereby taken cognizance for the offence punishable under Section 494 of IPC, as against the petitioner.

2. The respondent lodged private complaint as against the



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petitioner for the offence under Section 494 of IPC. The crux of the complaint is that the marriage between the first accused and the respondent was taken place on 03.05.1993 as per Hindu rites. Due to their wedlock, they gave birth to a male child. Thereafter, there was misunderstanding between them and hence, the respondent left the matrimonial house and stayed away from the first accused. While being so, the respondent came to know that the first accused and the petitioner herein were married during the subsistence of the first marriage. Therefore, the respondent lodged the present complaint and the same has been taken cognizance by the Court below in C.C.No.23 of 2021.

3. The learned counsel appearing for the petitioner submitted that the petitioner had no knowledge about the marriage between the first accused and the respondent. Even according to the respondent, the first accused got married the petitioner and living together. Even assuming that the second marriage proved by the respondent, the petitioner cannot be prosecuted for the offence under Section 494 of IPC.

4. Heard the learned counsel appearing on either side and



perused the material placed before this Court.

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5. It is seen that the respondent married one B.Vasu on 03.05.1993 and they gave birth to one male child. Thereafter due to dispute arose between them, the respondent left the matrimonial home. During March 2020, the respondent came to know that her husband married the petitioner during the subsistence of the first marriage. Hence, she lodged private complaint as against her husband and the petitioner herein for the offence punishable under Section 494 of IPC.

6. It is relevant to extract the provision under Section 494 of IPC as follows :-

“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”

Therefore, either wife or husband is held liable to be punished for the offence under Section 494 of IPC.

7. Further only the person who contracts the second marriage during the subsistence of the first marriage, can be proceeded against under Section 494 of IPC. Only the husband or wife, can be made as an accused when they contract a second marriage during the subsistence of the first marriage. Therefore, the petitioner who is allegedly be the second wife would not be made an accused for the offence under Section 494 of IPC.

8. That apart, the present impugned complaint has been lodged



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after the period of 26 years. In the complaint, the details of the place where the marriage exactly taken place and what date the marriage had been taken place have not been even whispered. The complaint is also absent insofar as the person who witnessing the marriage. In view of the above discussions, the complaint lodged as against the petitioner cannot be sustained and it is liable to be quashed.

9. Accordingly, the proceedings in C.C.No.23 of 2021, on the file of the Additional Mahila Court (Magistrate Level), Erode, is hereby quashed as against the petitioner alone. The trial Court is directed to proceed with the case as against other accused person and pass orders on merits and in accordance with law as early as possible.

10. With the above directions, the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.

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To

1. The Additional Mahila Court
(Magistrate Level), Erode.

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