



Crl.O.P.No.18818 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2023

CORAM:

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

CRL.O.P.No.18818 of 2021 and
Crl.MP.No.10339 of 2021

1. C.Senthilkumar
2. C.Prema
3. Rukkumani
4. Ravi
5. R.Amutha
6. Nadarajan

... Petitioners

Vs.

- 1.The State rep.by
The Inspector of Police,
All Women Police Station,
Perur,
Coimbatore.
(C.C.No.901 of 2020)

- 2.Asokadevi

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.901 of 2020 on the file of Additional Mahila Court at Coimbatore and quash the same.

For Petitioners : Mr.K.Myilsamy

For Respondent 1 : Mr.A.Gopinath,
Government Advocate (Crl.Side)

For Respondent 2 : Mr.R.Krishnamurthy



Crl.O.P.No.18818 of 2021

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ORDER

This criminal original petition has been filed to quash the proceedings in C.C.No.901 of 2020 on the file of the Additional Mahila Court at Coimbatore thereby taken cognizance for the offences under Section 294(b), 498(A), 506(2) of Indian Penal code and Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 2002 as against the petitioners and others.

2. The case of the prosecution is that that the second respondent lodged complaint as against the petitioners alleging that she married one, Thangaraj on 07.09.2014. Thereafter, they got separated due to misunderstanding and her husband filed divorce petition in H.M.O.P.No.149 of 2016 on the file of the Sub Court, Tiruppur. While pending the divorce petition, the 2nd respondent fell in love with the 1st Accused/1st Petitioner and married him on 01.06.2017. Thereafter, the first accused had spent all the salary of the defacto-complainant and she also borrowed some money from outside and gave to him. Thereafter, other family members had harassed her by demanding huge dowry stating that if not brought any dowry she would be driven out from the matrimonial house. They also scolded with filthy



Crl.O.P.No.18818 of 2021

languages and threatened her with dire consequences. Hence, she lodged a complaint on 29.12.2018. On receipt of the same, the next day on 30.12.2018, the first respondent registered FIR in Cr.No.17 of 2018 for the offences under section 294(b), 506(i) of IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 2002. After completion of investigation, the 1st respondent filed a final report for the offences under section 294(b), 498(A) and 506(i) IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 2002.

3. The learned counsel for the petitioners contented that the 2nd respondent suppressed her first marriage with one, Thangaraj and got married the 1st petitioner. Immediately came to know about the 1st marriage, the 1st petitioner herein filed a complaint in C.C.No.211 of 2019 on the file of the Judicial Magistrate, Suler for bigamy and it is pending. Immediately, he also filed divorce petition in H.M.O.P.No.185 of 2018 on the file of the II Addl.Subordinate Judge, Coimbatore. Immediately, after receipt of summons, the 2nd respondent lodged a complaint on 29.12.2018. The 1st respondent without even conducting any enquiry, immediately registered an FIR and recorded the statements from the witnesses on the same day i.e., 30.12.2018



Crl.O.P.No.18818 of 2021

and most of the investigation was completed on the same day i.e., on 30.12.2018. Therefore, at the time of marriage between the 1st petitioner and the 2nd respondent on 01.06.2017, the 2nd respondent's 1st marriage was very much existing and as such marriage between the 1st petitioner and the 2nd respondent is null and void. The 1st petitioner lost his cadre as husband of the 2nd respondent. Therefore, the offence under section 498(A) would not attract as against the 1st petitioner. That apart, in order to attract other offences, no specific allegation as against the accused and as such no offence is made out against the petitioners.

4. Per contra the learned counsel for the 2nd respondent would submit that though offence under Section 498(A) of IPC is not attracted as against the petitioner, other offences are very much attracted as against them, since there are specific allegation in order to attract other offences under sections 294(b), 506(ii) of IPC and Section 4 of the Tamilnadu Prohibition of Harassment of Women Act, 2002. Further the grounds raised by the petitioners cannot be considered by this court under section 482 of Cr.P.C. It can be only considered during the trial before the trial court. Further he submitted that mere pendency of the divorce petition filed by the 1st petitioner and the private



Crl.O.P.No.18818 of 2021

complaint filed by the 1st petitioner is not the ground to quash the proceedings initiated by the 2nd respondent for the offences committed by them.

5. The learned Government Advocate (Crl.Side) appearing for the first respondent / police submitted that the 1st petitioner and his family members had full knowledge about the first marriage of the 2nd respondent and also pendency of the divorce petition pending between the 2nd respondent and her 1st husband in H.M.O.P.No.149 of 2016. Having knowledge about the 1st marriage, the 1st petitioner fell in love with 2nd respondent and got married on 01.06.2017. Due to bifurcation, the divorce petition filed by the husband of the 2nd respondent was transferred to the Sub Court, Udumalaipet and renumbered as H.M.O.P.No.73 of 2017. Subsequently, divorce was also granted between the 2nd respondent and her 1st husband by the judgment and decree dated 12.03.2021. Therefore all the evidences are very much attracted as against the petitioners since there are very serious allegations as against them.

6. Heard, the learned counsel appearing on either side.



Crl.O.P.No.18818 of 2021

7. There are 11 accused, in which the petitioners are arrayed as

Accused No.1,2,3,5,7 and 10. Admittedly, the 2nd respondent married one, Thangaraj on 07.09.2014. Due to misunderstanding between them, they got separated and her husband Thangaraj filed a divorce petition in H.M.O.P.No.149 of 2016 on the ground of cruelty and desertion. While pending divorce petition filed by her 1st husband, 2nd respondent fell in love with 1st petitioner. The pendency of the divorce petition and her earlier marriage were suppressed by the 2nd respondent and got married the 1st petitioner on 01.06.2017. Immediately, came to knowledge about her 1st marriage and pendency of the divorce petition, the 1st petitioner herein filed a private complaint in C.C.No.211 of 2019 on the file of the Judicial Magistrate, Sulur on 11.12.2018 against the 2nd respondent and it is pending for trial. In the said complaint, the 1st petitioner categorically averred that after the marriage between them, he came to understand that she got married one, Thangaraj, S/o.K.Ramakrishnan. He also enquired with her mother and she made an evasive reply. He also came to understand that her 1st husband filed divorce petition and it is pending. Therefore, he filed a complaint to punish the 2nd respondent for the offences under sections 494 and 495 of IPC r/w. Sections 5(i) & 17 of the Hindu Marriage Act, 1955. The said complaint was



CrI.O.P.No.18818 of 2021

taken cognizance by the trial court in C.C.No.211 of 2019 and issued summons to the 2nd respondent. In the meanwhile, the 1st petitioner also filed divorce petition in H.M.O.P.No.185 of 2018 on 22.11.2018 seeking dissolution of their marriage on the ground that the 1st marriage was very much existing.

8. It is also curious to note that on receipt of the summons in H.M.O.P.No.185 of 2018 and after receipt of the summons from C.C.No.211 of 2019, the 2nd respondent lodged a complaint on 29.12.2018 before the 1st respondent at about 06.00 p.m. Immediately after receipt of the same, the 1st respondent without even conducting any enquiry, registered FIR as against 11 accused persons. In fact on the very same day on 30.12.2018, they enquired all the witnesses and recorded their statements under section 161 of Cr.P.C. Almost entire investigation was completed on the same day. The 1st respondent failed to conduct any enquiry as contemplated under section 41(A) of Cr.P.C. Time and again, the Hon'ble Supreme Court of India and this court directed the Investigation Officer to conduct enquiry on receipt of the complaint with regards to matrimonial offence. However, the 1st respondent registered FIR on 30.12.2018 and almost completed the entire investigation on the same day for the reasons best known to the 1st respondent. In this case, the following legal issue arises:



Crl.O.P.No.18818 of 2021

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Whether offence under section 498 (A) of IPC is made out as against the 2nd husband, that too when the 1st marriage is very much in subsistence?

9. Admittedly, when the first marriage was very much in subsistence between the 2nd respondent and one, Thangaraj, she got married the 1st petitioner. Immediately after came to understand about her 1st marriage, the 1st petitioner also filed complaint for bigamy as well as petition for divorce and to dissolve their marriage. It is relevant to extract the provision under section 498(A) of IPC hereunder:

498(A) - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

10. Therefore, the offence is made out only as against the person being the husband or the relative of the husband of a women. Hence, this court is of the considered opinion that offence under section 498(A) of IPC cannot be attracted as against the petitioners. During the subsistence of a valid marriage between the 2nd respondent and her husband Thangaraj, the offence under section 498(A) of IPC as against him cannot be attracted. The marriage



Crl.O.P.No.18818 of 2021

between the 1st petitioner and the 2nd respondent has been found to be null and void, when the first marriage was very much in subsistence. Therefore, the charge under section 498(A) of IPC cannot be sustained.

11. To attract the offence under Section 294(b) of IPC, there must be an uttering of words to affect the person who lodged the complaint. In this regard it is relevant to extract the Section 294(b) of IPC, as follows :-

"294. Obscene acts and songs —Whoever, to the annoyance of others— (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

Admittedly, there is absolutely no words uttered by the petitioners as such to constitute the offence under Section 294(b) of IPC, there is no averments and allegations. Further the charges do not show that on hearing the obscene words, which were allegedly uttered by the petitioners, the witnesses felt annoyed. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the petitioners



Crl.O.P.No.18818 of 2021

annoyed others, it cannot be said that the ingredients of the offence under

Section 294(b) of IPC is made out.

12. Insofar as the offence under Section 506(ii) of I.P.C is concerned, threat should be a real one and not just a mere words when the person uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. Whereas, in the case on hand, there is no averment to attract the offence under Section 506(ii) of I.P.C.

13. In view of the above, the offence under section 4 of the Tamilnadu Prohibition of Harassment of Women Act, 2002 is also not attracted as against the accused persons and the entire proceedings are liable to be quashed. Accordingly, the entire proceedings in C.C.No.901 of 2020 on the file of Additional Mahila Court at Coimbatore is quashed and this Criminal original Petition is allowed. Consequently, connected miscellaneous petition is closed.

12.10.2023

Index : Yes/No

Internet : Yes/No

Speaking order/non-speaking order

lok/gvn



Crl.O.P.No.18818 of 2021

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- To
1. Additional Mahila Court,
Coimbatore.
 2. The Inspector of Police,
All Women Police Station,
Perur,
Coimbatore.
 3. The Public Prosecutor,
High Court of Madras



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Crl.O.P.No.18818 of 2021

G.K.ILANTHIRAIYAN, J.

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CRL.O.P.No.18818 of 2021

12.10.2023