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Crl.R.C.No.2026 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.2026 of 2023

and

Crl.M.P.No.18686 of 2023

Gunasekaran

... Petitioner/Accused-1

Vs.

The Inspector of Police,
W-2, All Women Police Station,
Vadapalani,
Chennai – 600 026.

... Respondent

PRAYER: Criminal Revision Case has been filed under Sections 397 and 401 of Cr.P.C, praying to call for the records pertaining to Crl.M.P.No.9335 of 2023 dated 17.10.2023 in C.C.No.296 of 2023 pending on the file of XVII Metropolitan Magistrate, Saidapet, Chennai and set aside the same.

For Petitioner

: Mr.N.Nagarjuna

For Respondent

: Mr.S.Sugendran

Additional Public Prosecutor



Crl.R.C.No.2026 of 2023

ORDER

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This petition has been filed challenging the order passed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.9335 of 2023 dated 17.10.2023 in C.C.No.296 of 2023.

2.The petitioner/A1 in C.C.No.296 of 2023, who is facing trial for offence under Section 494, 498A, 406 and 506(i) of IPC, has filed a discharge petition before the Lower Court in Crl.M.P.No.9335 of 2023. The Lower Court by order dated 17.10.2023, dismissed the same, against which the present revision.

3.The primary contention of the petitioner is that the de-facto complainant in her statement admits that she came to know about the fact of the petitioner having married A2 in this case, even in the year, 2013. That being the case, she lodged a complaint in the year 2020, i.e., after 7 years.

The maximum punishment is only 3 years, hence, the case is hit by limitation



Crl.R.C.No.2026 of 2023

under Section 468 of Cr.P.C. Further submitted that the offence under Section 494 IPC is non cognizable offence, hence, police complaint will not sustain. He further submitted that in this case other offences under Sections 406 and 506(i) IPC are not made out. Merely by producing the birth certificate of one Prateeka, in which, the petitioner/A1 shown as father and A2 as mother, would not suffice to prosecute the petitioner under Section 494 IPC. Further, submits that earlier the de-facto complainant lodged a complaint with the Ambur Police and CSR No.170 of 2013 was assigned as early as on 11.12.2013 and thereafter the case was found to be a family dispute. Later both the complainant and counter complainant in the CSR compromised the issue and the case was closed. Thus the de-facto complainant is aware of the happenings in the year 2013 and lodged a complaint in the year 2020.

3.1.In support of his contention, the petitioner relied upon the decision of the Alahabad High Court in the case of *Suraj Lal Jaiswal vs. The*



Crl.R.C.No.2026 of 2023

WEB COPY

State of Uttar Pradesh and another reported in 2006 CriLJ 3323 for the point that if a person aggrieved under Section 494 IPC, it can be redressed by way of private complaint and not by a police action. He further relied upon the judgment of the Hon'ble Apex Court in the case of *Sharda Prasad Sinha vs. State of Bihar* reported in 1977 AIR 1754 for the point that when the allegations contained in the complaint did not constitute any offence, the Lower Court taking cognizance is an error.

4.The learned Additional Public Prosecutor strongly opposed the same stating that there is no dispute with regard to the marriage between the petitioner and de-facto complainant in the year 2005 and thereafter begotten two children aged about 3 years and 5 years. The petitioner being a professional dancer frequently visit to Chennai. Initially, he visited de-facto complainant, his children on occasions, thereafter he completely stopped visiting them. In the meanwhile, he developed the relationship with A2 and married her and they also got a baby, birth certificate would confirm the



CrI.R.C.No.2026 of 2023

WEB COPY

same. He further submitted that petitioner's contention has to be negated for the reason that prosecution has been launched against the petitioner not for offence under Section 494 IPC alone. He has been proceeded along with offence under Section 498 and 506(i) of IPC which are cognizable offences. The first principal is that non cognizable offence can be proceeded and tried along with cognizable offence. This Court as well as the Apex Court in several decisions confirmed the same. He further submitted that in the 161 statement the petitioner states about he asking permission for second marriage and not for a marriage taken place and it is also clearly stated by the de-facto complainant that she was not agreeable for the same. Later complaint lodged, CSR assigned and during earlier complaint, the petitioner as well as de-facto complainant were called and the petitioner gave an undertaking that he will reside with the de-facto complainant and take care of the children and thereafter recording the same, the complaint was closed. Taking advantage of the same, he stayed at Chennai. He had second marriage



Crl.R.C.No.2026 of 2023

which would itself prove that de-facto complainant subjected to cruelty. As per Section 498A IPC, cruelty is not only physical, even mental cruelty is sufficient. In this case while first marriage was in subsistence and having two children, the petitioner having second marriage would clearly prove that de-facto complainant had been subjected to cruelty.

4.1.He further submitted that the gold jewels presented during the marriage has been retained by the petitioner. Hence, offence under Section 406 IPC also made out. The Lower Court considering all these aspects, rightly dismissed the same. Further, it has been clearly stated by the de-facto complainant the she had the knowledge only in the year 2020 thereafter preliminary enquiry conducted following *Lalitha Kumari* case. Thereafter only FIR registered, now after collecting documents charge sheet filed. The Lower Court also recorded that petitioner is not denying the second marriage with A2. Hence, prayed for dismissal of the petition.



Crl.R.C.No.2026 of 2023

WEB COPY

5.Considering the submissions made and on perusal of the material,

this Court finds that the Lower Court had passed a well reasoned order.

Further, learned Additional Public Prosecutor submits that the case is posted on 08.12.2023 before the Lower Court for framing of charges. In view of the above, this Court is not inclined to entertain this petition. Hence, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

29.11.2023

Index : Yes/No

Internet : Yes/No

Speaking order / Non-speaking order

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Crl.R.C.No.2026 of 2023

M.NIRMAL KUMAR, J.

rsi

To

- 1.The Inspector of Police,
W-2, All Women Police Station,
Vadapalani,
Chennai – 600 026.
- 2.The XVII Metropolitan Magistrate,
Saidapet, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

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