



WEB COPY



CrI.O.P.No.28081 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CrI.O.P.No.28081 of 2018

&

CrI.M.P.No.16325 of 2018

1. B.M. Fathima Sogra
2. Syed Mujeeb

.. Petitioners

Vs.

S. Abdul Samad

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the complaint in C.C.No.302 of 2017 on the file of the Judicial Magistrate-1, Vellore and quash the same.

For Petitioner : Mr.P. Manikannan

For Respondent : Mr. I.Syed Sibaghathulla
Legal Aid counsel



CrI.O.P.No.28081 of 2018

ORDER

WEB COPY

This Criminal Original Petition is filed to call for the complaint in C.C.No.302 of 2017 on the file of the Judicial Magistrate-1, Vellore and quash the same.

2. The learned counsel for the petitioners submitted that the 1st petitioner married the respondent/complainant on 18.03.2012 at Jamiya Masjid Pattur, Chennai as per the Muslim Customs and rites according to shariat law. Out of their wed-lock, a female child namely Aameena Farheen was born to them. Subsequently, on account of difference of opinion between them, the petitioner/wife on 16.01.2016, pronounced Khula nama – a bride divorce as per shariate law and the respondent has accepted the Khulanama given by the 1st petitioner. Thereafter, the 1st petitioner married the second petitioner on 28.05.2016. It was also registered before the Registrar, Sub Registrar Office, Arcot on 31.5.2016, vide certificate of Registration of Marriage, Marriage Sl.No.72/2016. Under the circumstances, the respondent/complainant filed a complaint against the petitioners herein



under section 494 r/w.34 IPC before the Judicial Magistrate Court No.1, Vellore on the allegation of 'Bigamy'. He further submitted that the complaint is filed in order to harass and give mental torture to the petitioners. Since no offence is made out under section 494 IPC, the private complaint is not maintainable, hence the same is liable to be quashed. Thus he prayed for allowing of this petition.

3. The learned counsel for the respondent submitted that the fact of previous marriage and subsequent Khulanama made by the 1st petitioner is not disputed. However, the 2nd marriage of the petitioner as per the Muslim Law on 28.05.2016 is also not disputed.

4. Heard both sides and perused the materials available on record.

5. From perusal of records, it is seen that the 1st petitioner got separated from the respondent by declaring Khula Nama on 16.01.2016. in the presence of witnesses and subsequently she got married to 2nd petitioner on 28.05.2016. It is also registered before the Sub Registrar Office, Arcot.



CrI.O.P.No.28081 of 2018

So as per the Muslim Shariate law, the 1st petitioner, after getting divorce from her first husband/respondent, married the 2nd petitioner. Under the circumstances, this court is of the view that the offence u/s.494 IPC could not be attracted. Therefore, the complaint filed by the respondent is not maintainable. Hence the same is liable to be quashed.

6. In the result, the criminal proceedings in C.C.No.302 of 2017 on the file of learned Judicial Magistrate I, Vellore is hereby quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

12.07.2023

msr
Index:yes/no
Internet:yes/no

To
The Judicial Magistrate-1, Vellore

V. SIVAGNANAM, J.

msr



WEB COPY



CrI.O.P.No.28081 of 2018

CrI.O.P.No.28081 of 2018
&
CrI.M.P.No.16325 of 2018

12.07.2023

5 of 5