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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation : 23/06/2023

Date of Pronouncement : 14/07/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.19355 of 2022
and
Crl.MP(MD)Nos.13127 and 13128 of 2022

1.R.Maheswari

2.Ramesh Kannan

: Petitioners/A4 and A5

Vs.

P.Prema

: Respondent/Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the proceedings in CC No.65 of 2022 on the file of the Judicial Magistrate Court, Devakottai and quash the same as illegal in so far as the petitioners are concerned.

For Petitioners : Mr.R.Gowrishankar

For Respondent : No appearance

**O R D E R**

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This criminal original petition has been filed seeking quashment of the case in CC No.65 of 2022 on the file of the Judicial Magistrate, Devakottai.

2.The facts in brief:-

The respondent namely Prema filed a private complaint stating that a marriage proposal was made by A1 and A2 between her daughter namely Prathiba and Tamilvel, who was their son. At that time, she was informed by A1 and A2 that Prathiba was already married and divorcee. So, she was not willing for the above said marriage proposal. Later, it was known to this complainant that Tamilvel was already married and divorcee. Suppressing the above divorce, continuous pressure was made A1 and A2 for the above said marriage. Later, Prathiba agreed for the marriage. Marriage was also performed, on 11/02/2018 between Prathiba and Tamilvel. A male child born to them, on 05/09/2019. Later, Tamilvel went abroad and died in Brunei. Till the death of Tamilvel, the first marriage and the divorce was not informed. Prathiba and her son was also not properly treated. The accused also refused to accept the Prathiba and her son as the legal heirs of



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Tamilvel. When that was enquired, they were criminally intimidated. Thereafter, only the above said cheating came to their notice. At the time of registration of the marriage, a false certificate has been produced as if the marriage with Prathiba is the first marriage with Tamilvel. To grab the property belongs to Tamilvel, A1 and A2 also filed a complaint in Na.Ka.A1 No.8594/2019 before the RDO, Sivagangai. They were also filed O.S No. 43 of 2021 before the District Munsif Court, Manamadurai stating that Prathiba is not the legally wedded wife of Tamilvel. Similarly A3 filed O.S No.64 of 2021 before District Court, Sivagangai. So with these allegations, the complaint has been filed for the alleged offences punishable under sections 120(b), 417, 420, 466 and 468 IPC and it was taken on file in CC No.65 of 2022 by the Judicial Magistrate, Devakottai.

3. Seeking quashment of the same, this petition has been filed on the ground that the private complaint is legally not sustainable, since none of the allegations mentioned in the complaint attract any of the ingredients alleged.



4. Even though, the respondent has been served, she has not chosen to appear before this court.

5. Records have been called for from the trial court and perused.

6. Before we go into the disputed issue, the background facts can be briefly narrated.

7. Prathiba is the daughter of the respondent/complainant. A1 is the brother of the complainant's husband. A2 is the sister of the complainant's husband. The marriage was performed between Prathiba and the deceased Tamilvel, on 11/02/2018 is not denied. The circumstances under which, the marriage was performed is disputed by the petitioners stating that Tamilvel was already married. That fact was suppressed by A1 and A2, while making marriage proposal. Later, Tamilvel also died in Brunei. After that, it appears that trouble has arisen between A1 and A2 and Prathiba. Prathiba got a child born to the deceased Tamilvel. It is also not disputed. Some properties have been left by the deceased Tamilvel, over the above said property, dispute has arisen between them.



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8.It is an allegation to the effect that on the date of registration of the marriage, a false certificate has been created as if it is the first marriage with the above said Tamilvel. But this court is not in a position to understand this accusation. Because, A1 is the own sister of the complainant's husband. When that is being so, how the above said first marriage of Tamilvel was not known to the complainant is completely not understandable.

9.A counter allegation has been made by A1 against Prathiba in a petition, that was filed by him against Prathiba under the provisions of the Maintenance and Welfare of the Parents and Citizens Act, 2007 before the Revenue Divisional Officer, Sivagangai. In the complaint, he has stated that Tamilvel was already married to one Suriya Ninansley in Indonesia and through her, he had two children and the above said marriage still in subsistence. But without permission and consent of the first wife, without properly undergoing religious customary rites, a false entry is made before the Sub Registrar, Devakottai, as if the marriage was performed between Tamilvel and Prathiba.



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10.It is further stated by A1 that the property was purchased by him and he developed the property by constructing a house. The deceased Tamilvel promised them to take care till their life time and under the false promise, even without disclosing the nature of the document, Tamilvel alleged to have got settlement deed registered in his favour in a fraudulent manner. But property was not settled to Tamilvel. Since he has already died and not in a position to maintain themselves, the above said petition was filed to cancel the settlement deed. An order has been passed by RDO, Sivagangai. They were advised to work out their remedy through appropriate civil proceedings. The above said order was passed, on 28/12/2021. Pending the above said proceedings, this private complaint has been filed in November' 2021.

11.In the meantime, further proceedings have been initiated between the parties. One before the Principal District Munsif Court, Manamadurai by A1 and A2 against Pradeepa and others. The above said suit was filed in August 2021. Similarly, Sakthivel, who is the son of A1 and A3 in this matter filed a suit in O.S No.64 of 2021



before the District Court, Sivagangai. So it is seen that because of the above said property issue only, complaint and counter complaint and two other suits have been instituted between the parties. Actually, Prathiba ought to have filed the complaint, but the complaint has been filed by the mother of Prathiba, of course on the ground that she is also competent to initiate criminal proceedings. So it is clear from the above said factual circumstances that as a counter blast to the above said proceedings initiated by A1 and A2, this complaint has been filed, pending the above said proceedings. Subsequent to the above said proceedings, to resolve the issue, two suits have been initiated and stated to be pending in the competent civil court.

12. In view of the above said circumstances, I am of the considered view that the parties must work out their remedy in the pending suits itself. No material has also been placed by the respondent before the trial court to show that a fraudulent document was created and filed before the Register of Marriage at the time of registration of the marriage between Prathiba and the deceased Tamilvel.



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13. When it is an attempt with *mala fide* motive and *mala fide* intention, I am of the considered view that continuation of the proceedings against the petitioners will amount to abuse of process of court and law. On the sole ground, this petition is liable to be allowed leaving the parties to work out their remedy in the pending civil matters.

14. In the result, this criminal original petition stands **allowed**. The case in CC No.65 of 2022 on the file of the Judicial Magistrate Court, Devakottai is quashed against the petitioners. Consequently, connected Miscellaneous Petitions are closed.

14/07/2023

Index:Yes/No
Internet:Yes/No
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To,

The Judicial Magistrate,
Devakottai.



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G.ILANGOVAN, J

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