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CrI.O.P.No.17781 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.17781 of 2024
& CrI.M.P.No.10564 of 2024

1. Mr.Sanjeev Verma.
2. Kavitha Rajasuriar Rajoo Perianan. ... Petitioners/Accused 1 & 2

Vs.

Mrs.S.Abirami. ... Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.8171 of 2024 on the file of the Learned XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same against the petitioners.

For Petitioners : Mr.Kadambri Suresh,
for Mr.S.V.Pravin Rathinam

For Respondent : Mrs.Rohini Ravikumar



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ORDER

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This Criminal Original Petition is filed to quash the private complaint instituted by the wife of the 1st petitioner alleging that the 1st petitioner and the 2nd petitioner having a illicit relationship. The minor daughter of the complainant being under the custody of the 1st petitioner, she been tutored to act against the mother/complainant and also she been forced to take liquor and get addicted to it which is against Section 77 of Juvenile Justice Act.

2. The Metropolitan Magistrate who has considered the said complaint and taken cognizance of offence of bigamy under Section 494 of I.P.C since there is specific application against the petitioners that they are living in bigamous relationship at Adyar.

3. The present petition is filed to quash the said complaint on the ground that except the oral allegation of illegal relationship and bigamy, there is no piece of evidence to substantiate the alleged marriage of the 1st petitioner with the 2nd petitioner to attract Section 494 of I.P.C.

4. The Learned Counsel appearing for the petitioner referring the expression used in Section 494 of I.P.C would specifically submit that marrying



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again during the lifetime of husband or wife alone will attract the said Section.

Even living together relationship without marriage will not get attracted.

Therefore, in the absence of proof for marriage or even for an allegation in the complaint disclosing the fact that the 1st petitioner and the 2nd petitioner got married when the 1st marriage is in existence, the ingredient of Section 494 of I.P.C will not get attracted.

5. The Learned Counsel for the respondent/complainant referring the exchange of notice and the complaint as such would submit that the factum that the petitioners are living together as husband and wife in the eye of the public been spoken in the complaint and in the course of trial, same will be proved.

6. The 2nd petitioner claims herself only as a business partner of the 1st petitioner, but other circumstantial material would go to show that the relationship is not only financial but also physical.

7. This Court, on perusing the petition and the documents



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accompanied with the petition viz., the complaint and certain photographs though claim to be morphed and forged, is of the opinion that these disputed facts are to be tested and decided only in the trial. This Court cannot by exercising its power under Section 528 of BNSS., play the role of the trial Court and arrive at a conclusion which will deprive the opportunity to the parties to establish the case by leading evidence.

8. Therefore, the petition to quash stands dismissed. Since the nature of the complaint is between the spouse and interest of the minor girl also been involved, this Court direct the XVIII Metropolitan Magistrate, Saidapet, Chennai to take up the matter out of turn and decide it as expeditiously as possible.

9. With this observation, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

13.09.2024

Index : Yes/No
Neutral Citation : Yes/No
bsm



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To:-

1. The XVIII Metropolitan Magistrate, Saidapet, Chennai.

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Dr.G.JAYACHANDRAN,J.

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