



Crl.A.No.363 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.09.2024

Pronounced on : 10.09.2024

CORAM : JUSTICE N.SESHASAYEE

Crl.A.No.363 of 2019

S.Vasuki

.... Appellant / Respondent / Complainant

Vs

1.Sivananda Pandian

2.Nilambikai

.... Respondents / Appellants / Accused

Prayer : Criminal Appeal filed under Section 378 Cr.P.C., praying to call for the records in C.C.No.4128 of 1994 on the file of XVIII Metropolitan Magistrate Court and set aside the order dated 23.04.2007 passed in C.A.No.123 of 2007 on the file of III Additional Sessions Judge, City Civil Court, Chennai, and punish the respondents herein and pass such other suitable orders.

For Appellant : Mr.C.Umashankar

For Respondents : Mr.M.Bharath & Mr.P.Gunaraj
for R1 & R2



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JUDGMENT

This appeal is preferred challenging a judgment acquitting the respondents by the learned III Additional Sessions Judge, City Civil Court, Chennai, in C.A.No.123 of 2007 of the charges U/s.494 I.P.C. Very evidently, the appellant is the defacto complainant and the 1st respondent is her husband and the 2nd respondent is alleged to be married to the 1st respondent as second time, even while his marriage to the appellant is subsisting.

2.1 The appellant was married to the 1st respondent on 31.08.1977. It appears that their matrimony has not been comfortable almost since their journey commenced. The appellant has also preferred certain complaints before the learned Chief Metropolitan Magistrate, sometime in 1990 against the 1st respondent on the allegations of dowry demand. Be that as it may, 1st respondent had moved the Family Court with his petition for dissolution of marriage with the appellant on the grounds of desertion, the appellant would counter it with her petition for restitution of conjugal rights. These petitions were decided against the 1st respondent.



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2.2 It is in this setting, the appellant has preferred a complaint before the learned Magistrate, alleging that the 1st respondent has married the 2nd respondent, and that their marriage had secretly taken place in the house of the 1st respondent at Chennai, and that she had preferred complaints to the Special Cell of the Chief Minister, pursuant to which the police enquired the matter and found that the 1st respondent had married the 2nd respondent and that they have two children born out of their wedlock. She had also made a fair statement that when her father visited the 1st respondent at the said house, he only found the children and he did not find the 2nd respondent wearing *thali* or *mangalsutra*. The prosecutrix also produced Ex.P1 to Ex.P7.

3. When confronted with this accusation, the respondents denied the same, following which the trial Court framed necessary charges and proceeded to hold a trial for the charges framed. During trial, the complainant examined herself as PW1 and she examined three other independent witnesses as PW2, PW3 and PW4. For the respondents, the 1st respondent entered the box and examined himself as DW1.

4. The trial court entered a finding of guilt against both the accused persons, and



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the evidentiary facts which persuaded the trial Court to arrive at its decision are:

- a) that the 1st respondent had admitted that the two children born to the 2nd respondent were born through him and produced the birth Certificates of the children to establish the same.
- b) that in Ext.P5, voter's list, the 2nd respondent is shown as the wife of the 1st respondent.
- c) PW2, a cousin of the 1st respondent has spoken about the marriage between the respondents, which he had witnessed in 1989 at Tiruchendur. PW3 also speaks about the same.

Accordingly, the trial Court proceeded to hold that the 1st respondent indeed had married the 2nd respondent and convicted both of them for two years R.I. and also slapped a fine of Rs.5,000/- on each of them.

5. This judgement was taken in appeal by the respondents herein, in C.A.No.123 of 2007, before the III Additional Sessions Court, Chennai. The learned Sessions Judge, however, has held that the prosecutrix has not established the guilt of the respondents beyond reasonable doubts. He essentially found that while in her complainant the appellant herein had made a



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categorical statement that the respondents had married secretly in the house of the 1st respondent at Chennai, both PW2 and PW3 had testified that they had witnessed the marriage between the respondents sometime in September, 1989 at Tiruchendur, and he granted benefit of doubt to the respondents, and acquitted them. This judgement of the sessions court is now under challenge in this appeal.

6. The learned counsel for the appellant made the following submissions :

- a) It is not in dispute that the first respondent had married the appellant sometime in 1977, and they did not share a comfortable matrimony. The first respondent more or less deserted the appellant, as a result of which she was forced to shift her residence from Madurai, where she has gone with her husband after marriage to him, to Chennai. And there had been civil litigations instituted by the appellant against her husband besides a petition for restitution for conjugal rights. The first respondent on his part had filed a petition for dissolution of marriage with the appellant. While the trial Court dismissed the first respondent's petition for dissolution of marriage, it did allow the appellant's petition for restitution of conjugal rights. This is a setting



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which needs to be appreciated while appreciating the evidence relating to the appellant's allegation of first respondent contracting second marriage with the second respondent.

- b) So far as the factum of second marriage is concerned, PW2 and PW3 were the eyewitnesses to the event, and they both make a consistent statement that the marriage had taken place at Tiruchendur temple sometime in August, 1989, that it was conducted by a certain Krishna Iyer, a priest for the function, and both had stated that they shared this information with the appellant. It is that true the appellant did not raise the issue of second marriage immediately but she as PW1 had deposed that there had been efforts to dissolve the differences between the first respondent and the appellant, and that answers the delay.
- c) It may be that there is some variance as to the place where the marriage took place if something which the appellate Court has found, but it pales into insignificance if one looks to Ext.P4, birth certificate of the child born to the respondents wherein the name of the first respondent is stated to be the father of the child born, as well as Ext.P5 voter's list where the second respondent is noted as the wife of the first respondent. It is too difficult to establish the second marriage for it is



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something done very secretly. Therefore, the second marriage in large number of circumstances might have to be inferred from certain attending circumstances.

Reliance was placed on the authorities in ***Baba Natarajan Prasad Vs M.Revathi*** [MANU/SC/0624/2024]; ***Shiramabai and Ors. Vs The Captain, Record Officer for O.I.C. Records and Ors.*** [MANU/SC/0902/2023] and ***Tulsa and Ors. Vs Durghatiya and Ors.*** [MANU/SC/0424/2008].

7. Per contra, the learned counsel for the respondents submitted that it is not just a place where the marriage is alleged to have taken place alone matters in proving the allegation of bigamy, but the conduct of both PW2 and PW3 read alongside the conduct of PW1. In a case of bigamy what is significant is not the birth of the child but the factum of marriage. It may be that the first respondent might have fathered the children delivered by the second respondent, but that does not *ipso facto* concludes the second marriage. The voter's list makes a statement but it does not operate as a proof to establish the second marriage. And in that testimony of both PW2 and PW3 would state that they have witnessed certain marriage at 10.00 a.m., on a certain August day in 1989, and that the marriage was conducted by a certain Krishna Iyer. This Krishna Iyer



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was not examined. Turning to the contention of the appellant that there were panchayats to resolve the dispute is concerned, she in her testimony has cited that a certain Santhosh Pandi, her brother is one of the witnesses to the event, but she did not choose to examine him.

8.1 Given the nature of charge for which the respondents herein faced trial and given the quality of evidence made available by the appellant, an unequivocal statement that could be made is that the first respondent, the husband of the appellant indeed was living with the second respondent and also had fathered the children through her, as could be seen from Ext.P4 and Ext.P5. But the issue here is whether the first respondent had married the second respondent. In terms of the definition of bigamy under Section 494 IPC, one of the spouse marrying a man or woman as the case may be during the subsistence of a marriage, is *sine qua non* for constituting the very offence. Therefore, this necessarily implies that the appellant is under a burden to establish that the first respondent had contracted another marriage with the second respondent, during the subsistence of her marriage with him.

8.2 When turning to prove this, this Court does not find any coherence in



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evidence for establishing bigamy. It is explained :

- (a) PW2 and PW3 claim that they are related to the complainant, and they were the eyewitnesses to the marriage of the first respondent with the second respondent. According to them, the marriage had taken place at Tiruchendur sometime in a August day in 1989. And they also claim that they had shared this information with the appellant. But the appellant did not react to that immediately. According to the counsel for the appellant, there were peace talks between the parties and that was the reason for the delay. However when the chief examination of PW1 is perused, it does disclose about the panchayats made by the elders, but that was deposed in the context of the appellant's narration as to the initial separation early in the matrimony and not in the context in which the learned counsel for the appellant projected;
- (b) Both PW2 and PW3 claim that they have seen the marriage and that they did share what they saw at Tiruchendur, but the response of the appellant was not consistent with the ordinary course of human conduct, as she laid her complaint some four years thereafter. It also lead to the suspicion whether PW2 and PW3 at all witnessed the marriage. In this context, it is relevant to note that the appellant had



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produced Ext.P3, a copy of the common order passed in FCOP.No.871/1993 and FCOP.No.1217/1993. Of these two cases, FCOP.No.1217/1993 was laid by the appellant for restitution of conjugal rights. In paragraph No.4 of the said order, the Family Court had extracted the pleadings of the appellant. This narration nowhere disclose any allegation of the first respondent's marriage with the second respondent. To emphasis this, the petition was laid in 1993, but the alleged second marriage had taken place in 1989 which PW2 and PW3 have claimed to have witnessed. If only PW2 and PW3 had witnessed the second marriage and have also duly conveyed the same to the appellant, then it is inconceivable that the appellant could have omitted to mention the same in her pleadings in FCOP.No.1217/1993. Indeed, even the complaint she preferred appears to disclose her source of information obtained from PW2 and PW3. Therefore, it is extremely doubtful whether PW2 and PW3 at all had witnessed the second marriage. It is because PW2 and PW3 might not have witnessed the alleged bigamous marriage of the first respondent, and the appellant herein had testified that the said marriage had secretly taken place in the house of the first respondent at Chennai. Here she



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makes a fair statement that when her father visited the first respondent, he saw the second respondent but without the *mangalsutra*. What therefore could be inferred is that the first respondent through his second marriage, might have taken the appellant as his mistress or that they may be in some extra matrimonial relationship.

9. It could now be concluded that at the best what the appellant could establish was that the first respondent had taken another woman in his life and had also fathered two children to her. But this Court is looking for such evidence that would establish the existence of ingredients which go to constitute an offence under Section 494 IPC. Here the appellant has not been able to produce such credible evidence which would make an inference of bigamy inevitable.

10. Necessarily benefit of doubt should be given to the respondents, which implies that this Court has to confirm the judgment of the Sessions Courts in C.A.No.123 of 2007. The criminal appeal accordingly stands dismissed.

10.09.2024



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Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order
kas/ds



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To:

1. The III Additional Judge
City Civil Court
Chennai.
2. The XVIII Metropolitan Magistrate
Saidapet, Chennai.



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N.SESHASAYEE.J.,

ds

Pre-delivery Judgment in
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