



CRL OP(MD) No.770 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 25/11/2024

PRESENT

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.770 of 2023

and

Crl.M.P.(MD)No.698 of 2023

A.Sahaya Selvam

... Petitioner

Vs

1.Krishnaveni

2.R.Sekar

3.Muthammal

4.Uchimahali

5.Kurusamy

..Respondents

PRAYER : Petition – filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the order dated 22.11.2020 made in Cr.M.P.No.4521 of 2020 on the file of the learned Judicial Magistrate No.3, Nagercoil and set aside the same insofar as not taking cognizance against the accused Nos.3 to 5 herein and direct the learned Judicial Magistrate No.3, Nagercoil to take cognizance and issue summons to accused Nos.3 to 5.

For Petitioner : Mr.A.Hishaam
For R3 & R4 : Mr.K.Khari Kharadas



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ORDER

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This petition has been filed challenging the order dated 22.11.2022 passed by the learned Judicial Magistrate No.III, Nagercoil insofar as not taking cognizance of the offence against Accused No.3 to 5 and deleting them from the array of accused.

2.Heard the learned counsel appearing for the petitioner and the learned counsel for the respondents 3 and 4.

3.The petitioner was married to the first respondent on 25.10.2009. There is also a girl child out of the marriage and the marriage was subsisting. While so, the first respondent left the matrimonial home and she is said to have once again married the second respondent. The third respondent is the mother of the first respondent/first accused and the fourth respondent is the mother of the second respondent/second accused. The fifth respondent is the grandfather of the first accused. It is under these circumstances alleging bigamous marriage, a private complaint came to be filed by the petitioner. The Court below on considering the allegations made in the complaint and the materials that



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were filed along with the complaint and after recording the sworn statement, took cognizance of the offence only as against the first and second accused under Sections 494 and 494 r/w 109 IPC, respectively. Insofar as A3 to A5 is concerned, the Court came to the conclusion that there is no *prima facie* case and accordingly, the case against them was dropped.

4. On carefully going through the documents placed before this Court, it is seen that A3 and A4, who are the third and fourth respondents in this case, have stood as witnesses for the marriage that had taken place between A1 and A2. They are none other than the mothers of the first and second accused, respectively. Both of them knew about the fact that A1 was already married to the petitioner and the marriage was in subsistence. While so, A1 proceeded to marry A2 and this marriage was also registered and A3 and A4 stood as witnesses during the registration of the marriage. This conduct on the part of A3 and A4 brought them within the scope of Section 494 r/w 109 IPC. In other words, they are equally placed like A2. Insofar as the fifth respondent (A5) is concerned, there are no materials to proceed against this person and this person was already aged about 79 years during the relevant point of time.



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5.In the light of the above discussion, the order passed by the learned Judicial Magistrate No.III, CrI.M.P.No.4521 of 2020 dated 22.11.2022 is partly interfered with insofar as relieving A3 and A4 alone from the case is concerned. The Court below shall take cognizance of the offence even as against A3 and A4. Insofar as A5 is concerned, the order passed by the Court below does not require the interference of this Court. Hence, the Court below shall issue summons to A3 and A4 also and proceed further in accordance with law.

6.In the result, this Criminal Original Petition is partly allowed in the above terms. There shall be a direction to the Court below to complete the proceedings within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

(N A V J)
25.11.2024

Index : Yes/No
Internet: Yes/No

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To
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- 1.The Judicial Magistrate No.3,
Nagercoil
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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N.ANAND VENKATESH,J

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