



Crl.O.P.(MD)No.14143 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.14143 of 2024

Malliga

... Petitioner

Vs.

1.State of Tamil Nadu, Rep. by
The Inspector of Police,
Chinnalapatti Police Station,
Chinnalapatti,
Dindigul District.
(Crime No.118 of 2024)

2.Boopathi

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying to call for the records relating to F.I.R. in Crime No.118 of 2024, dated 30.06.2024, on the file of the first respondent Police and quash the same as against the petitioner.

For Petitioner : Mr.M.Karunanithi
for Ms.G.K.Chitra Devi

For R1 : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

For R2 : Mr.S.P.Prabakaran



Crl.O.P.(MD)No.14143 of 2024

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ORDER

The petitioner / A3 in Crime No.118 of 2024, for the offences under Sections 494 and 495 I.P.C. has filed the quash application.

2. The learned counsel for the petitioner, without delving into the facts or merits of the case, submits that, on the face of it, no F.I.R. should have been registered by the respondent Police. The Magistrate ought to have taken the complaint on file under Section 200 of the Cr.P.C., rather than forwarding it under Section 156(3) of the Cr.P.C., in light of the specific bar under Section 198 of the Cr.P.C. Under Sections 494 and 495 of the I.P.C., only the victim may file a private complaint, and Police Officers are not authorized to conduct an investigation.

3. In support of this argument, the learned counsel for the petitioner relies on Paragraphs 9 to 11 of the judgment of this Court in **Crl.O.P.No.8519 of 2011**, dated **10.04.2017**, [**Dhananchezhian and another vs. The State of Tamil Nadu, Rep. by the Sub-Inspector of Police, All Women Police Station, Vellore and another**], which read as follows:-



CrI.O.P.(MD)No.14143 of 2024

WEB COPY

"9. It is settled law that in so far as Section 494 of I.P.C. is concerned, the provision is very clear that no case could be registered by the police and that the parties alleging bigamy will have to file a private complaint under Section 200 of Cr.P.C. Therefore, this Court finds that the registering of the FIR against the petitioners herein by the 1st respondent police and subsequent charge sheet laid for the offence under Section 494 of I.P.C. is not maintainable.

10. In other words, since Section 494 of I.P.C. is a non-cognizable offence and has to be filed by the aggrieved wife, it can be entertained only by way of a private complaint under Section 200 of Cr.P.C.

11. That apart, even such private complaint should contain material particulars as to the alleged second marriage. For better appreciation of the case, it is necessary to extract Section 494 of I.P.C. hereunder:

"494. Marrying again during lifetime of husband or wife.-Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.



Crl.O.P.(MD)No.14143 of 2024

(Exception)-This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge."

4. The learned Additional Public Prosecutor submits that the respondent Police had registered the F.I.R., since it was forwarded under Section 156(3) Cr.P.C., and in such a scenario, the Police had no option but to register the case. However, after obtaining an opinion, the case could have been disposed of. The petitioner has now filed this quash application, and the same can be decided accordingly.

5. The learned counsel for the second respondent submits that the second respondent had filed a complaint under Section 200 Cr.P.C., but



Crl.O.P.(MD)No.14143 of 2024

the Magistrate, on his own, had forwarded it under Section 156(3) Cr.P.C. The second respondent's concern is that, if the complaint is quashed, it should not affect his right to file a complaint under Section 200 Cr.P.C. to prosecute the petitioner and the other respondents and therefore, he seeks liberty to file a complaint under Section 200 Cr.P.C.

6. On considering the submissions and on perusal of the materials, this Court finds that the F.I.R. registered against the petitioner and the other two accused for offences under Sections 494 and 495 I.P.C. is not sustainable due to the specific bar under Section 198 Cr.P.C. Hence, this Court quashes the proceedings in Crime No.118 of 2024, not only against the petitioner but also against the other accused, who are similarly situated.

7. It is clarified that the quashing of Crime No.118 of 2024 does not preclude the second respondent/de-facto complainant from proceeding against the petitioner and the other accused, if he chooses to do so, by filing a private complaint under Section 200 Cr.P.C. The observations in this order are made solely for the purpose of disposing



Crl.O.P.(MD)No.14143 of 2024

this application. The concerned Court is directed not to draw any adverse inference against the second respondent/de-facto complainant if a private complaint is filed and to adjudicate the matter on its own merits.

8. Accordingly, this Criminal Original Petition is allowed.

NCC : Yes / No
Index : Yes / No
smn2

20.11.2024

To

- 1.The Inspector of Police,
Chinnalapatti Police Station,
Chinnalapatti,
Dindigul District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.14143 of 2024

M.NIRMAL KUMAR, J.

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Order made in
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Dated: 20.11.2024