



CrI.O.P(MD)No.21870 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **24.10.2024**

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THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.OP(MD). No.21870 of 2023

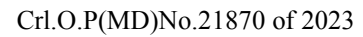
and

CRL.MP(MD). Nos.17102 and 17103 of 2023

1. Aathitya
2. Urkalan
3. Pechiammal ... Petitioners 1 to 3 / Accused Nos. 1 to 3
4. Umashankar
5. Prema
6. K.P.Murugan
7. Kalanithi ... Petitioners 4 to 7 / Accused Nos. 5 to 9

Vs.

1. State rep by its
The Inspector of Police,
All Women Police Station,
Nilakkottai,
Dindigul District.
(Crime No.5 of 2014) ... 1st Respondent / Complainant
2. Pandiyarajan ... 2nd Respondent /
De-facto Complainant



For Petitioners	:	Mr. S.Sukumar
For R1	:	M/s.M.Aasha Government Advocate (Crl. Side)
For R2	:	NA

This Criminal Original Petition is filed with the prayer to call for the records pertaining to the impugned to Charge Sheet in C.C. No.80 of 2022 on the file of the learned Judicial Magistrate, Nilakkottai and quash the same.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) appearing on behalf of the first respondent.

3. In spite of the notice being served and this Court directing the investigating officer to serve notice on the de-facto complainant recently, the



de-facto complainant appeared before this Court and undertook to argue the matter either personally or by engaging an advocate. However, today there is no representation. In view thereof, this Court proceeds further to consider the matter on merits and decide the issue.

4. It can be seen that the de-facto complainant lodged a complaint on 04.04.2014, in which the case was initially registered as Crime No. 5 of 2014 for offenses under Sections 418, 420, and 506(i) of the Indian Penal Code (IPC). Thereafter, upon completion of investigation, now the final report is filed for the offences under Sections 420, 506(i), 495 and 294(b) of IPC. The case of the de-facto complainant is that he got married to the first petitioner herein by name Aditya on 09.09.2013. Thereafter, on 27.01.2014, a summon was issued by the High Court directing the said Aditya to appear before the High Court. Upon verification, it was found that H.C.P. No. 94 of 2014 was filed by a third party, claiming that the de-facto complainant's wife, Aditya, is married to him and, therefore, she must be produced before the Court. Thereafter only the defacto complainant was shocked to know that his wife is already married and the marriage is also registered with the Registrar of Marriages on 19.06.2012 and completely suppressing the said marriage, the



de-facto complainant was cheated. When the de-facto complainant raised the issue with his in laws, all the petitioners herein threatened him with dire consequences and also threatened and abused using filthy language and hence the complaint. Upon finding that the de-facto complainant's version was true and correct, the final report was filed based on the statements made before the investigating officer.

5. The learned counsel for the petitioner submits that the charge under Section 494 is not maintainable because no complaint by the aggrieved person was filed before any court. Therefore, there is a bar under Section 198 of the Code of Criminal Procedure preventing the respondent from taking cognizance of the matter, investigating, and filing a final report. He further submits that the first petitioner subsequently approached the civil court, which declared that the marriage alleged by the de-facto complainant never took place and that the registration was invalid. Therefore, the court granted a decree holding that the marriage reflected in the registration certificate is null and void. Once the marriage is declared as null and void, then there is no question of the offence of bigamy as well as the offence of Section 420. He would submit that when the major offences are not made out, the incidental



offences of 506(i) and 294(b) are only a fall out of the major offences and that also no specific details have been given and therefore, the entire case need to be quashed.

6. Per contra, the learned Government Advocate would submit that the judgment of the civil court came only subsequently. As on date, when the petitioner contracted marriage of the de-facto complainant, she certainly committed the offence of bigamy. Accordingly upon finding that there was a valid registration of a marriage, the charge sheet was filed. In addition, the de-facto complainant was kept in the dark regarding the earlier marriage, which would also amount to cheating. When the de-facto complainant confronted the family of the petitioners, they have threatened him and also abused with filthy language. Therefore, both the offences under Sections 506(i) and 294(b) are also made out. There is nothing for this Court to interfere by way of this quash petition.

7. I have considered the rival submissions on either side and perused the material records of the case.



8. At the outset, as rightly contended by the learned counsel for the petitioner, the charge under Section 495 cannot be laid by the respondent police. The embargo under section 198 of the Code of Criminal Procedure is very clear that unless and otherwise the aggrieved person makes a complaint before the appropriate Court, no court can take cognizance of this said offence. Admittedly, even though the de-facto complainant is an aggrieved person, he did not make any complaint before the concerned Court. As a matter of fact, the FIR itself was not registered initially under the said provision. Therefore, even if the respondent police, during the course of the investigation, have found out that an offence of bigamy seems to have been committed, they ought to have advised the de-facto complainant to file a complaint before the appropriate Court and cannot lay a charge sheet by themselves. Therefore, on this ground, the charge under Section 495 is not maintainable. Even otherwise, as per the declaration made by the civil Court in respect of marital status is binding on the Criminal Court by virtue of Sections 41 and 42 of the Indian Evidence Act, 1872. Therefore, once the competent court exercising matrimonial jurisdiction gives a finding that the marriage had never taken place and it is a farce and it is a null and void, it will date back and undo the mischief. In light of the judgment of the Family Court,



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Madurai, in O.S. No. 31 of 2015, it can no longer be asserted that the petitioner committed bigamy. When that being the situation, offences under Section 495 or 420 cannot be held to be made out.

9. As rightly contended by the learned counsel, when the major offences based on which the complaint is given and the final report is filed are not made out and not sustainable, the incidental offences of 294(b) and 506(i) alone cannot stand on its own. As a matter of fact, a perusal of the final report, it can be seen that there is no crystal clear averments by the witnesses with reference to any public place in which any sexually coloured, languages being used and therefore, the offence under Section 294(b) is also not made out. For all the above reasons, I am of the view that this is a fit case where this Court shall interfere in the matter.

10. Under somewhat identical circumstances, this Court, speaking through the Hon'ble Mr.Justice G.K.Ilanthiraiyan in ***P.Maheshwari and others -vs- State of Inspector of Police and another*** in Crl.O.P.No. 755 of 2016, had quashed the case on the aforementioned grounds.



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11. For all the above reasons, the criminal original petition stands allowed. The case in C.C. No. 80 of 2022 on the file of the learned Judicial Magistrate, Nilakottai shall stands quashed. Consequently, the connected miscellaneous petitions are closed.

24.10.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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- To
1. The Judicial Magistrate,
Nilakkottai.
 2. The Inspector of Police,
All Women Police Station,
Nilakkottai,
Dindigul District.
 2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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D.BHARATHA CHAKRAVARTHY,J.

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Order made in
CRL OP(MD). No.21870 of 2023

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