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Crl.R.C.No.755 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 11.03.2025

Orders pronounced on : 27.03.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.755 of 2023

and

Crl.M.P.No.5826 of 2023

--

Mahalakshmi, D/o Bagavathi

.. Petitioner

Vs.

1. State rep. by the Inspector of Police,
AWPS Thidiyalur Police Station,
(C.C.No.833 of 2022)

2. Meignanam, S/o Nagaraj

.. Respondents

Criminal Revision Case filed under Section 397 read with Section 401 Cr.P.C. against the order dated 08.03.2023 in C.M.P.No.8549 of 2023 in C.C.No.833 of 2022 on the file of the Judicial Magistrate, Additional Mahila Court, Coimbatore.

For petitioner : Mr.G.R.Deepak

For respondents: Mr.S.Sugendran, Addl.P.P. for R-1

R-2 - not ready in notice

Page No.1/11



CrI.R.C.No.755 of 2023

WEB COPY

ORDER

The petitioner has filed the present revision petition against the order 08.03.2023 in C.M.P.No.8549 of 2023 in C.C.No.833 of 2022 on the file of the Judicial Magistrate, Additional Mahila Court, Coimbatore.

2. Learned counsel for the revision petitioner/A2 submitted that the petition filed in C.M.P.No.8549 of 2023 by the first respondent-Police before the Judicial Magistrate, Additional Mahila Court, Coimbatore, is not maintainable, as the procedures adopted by the Magistrate is unknown to law. He further submitted that the first respondent-Police had filed the petition belatedly on 24.02.2023 without any document to prove that the petitioner married A1 and no affidavit of statement of the de-facto complainant is produced before Court. It is further submitted that the Birth Certificate of the child Harini and the Aadhar Card of A2, are not sufficient to prove that there was marriage between the revision petitioner and A1. It is also stated that as per the procedures contemplated under Section 198 Cr.P.C., no Court shall take cognizance of the offence punishable under Chapter 20 of IPC, except upon complaint made by a person aggrieved by the offence. The first respondent-Police had no locus-standi to file a petition with respect to the offence of second marriage.

Page No.2/11



CrI.R.C.No.755 of 2023

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3. Further, the learned Judicial Magistrate has not followed the ratio laid down by the Honourable Supreme Court in the case of Sukhpal Singh Khaira Vs. State of Punjab, reported in 2022 (17) SCC 246, wherein, the Honourable Supreme Court held that Section 319 Cr.P.C. cannot be allowed just like that and the learned Magistrate, without following the procedures and mechanically allowed the petition without any application of mind. Therefore, according to the learned counsel for the petitioner, the first respondent-Police invoked Section 319 Cr.P.C. belatedly at the fag end of trial, and hence, the learned Magistrate failed to consider the nature of the allegations and the materials produced before Court by them and allowed the petition and hence, the order of the Magistrate is patently erroneous and the same is not sustainable. Hence, the impugned order passed by the learned Magistrate is liable to be set aside.

4. Learned Additional Public Prosecutor appearing for the first respondent-Police submitted that based on the complaint given by the de-facto complainant/P.W.1, the first respondent-Police registered a case in Crime No.15 of 2021 for the offences under Sections 498-A and 506 (Part-1) IPC and after investigation, the charge-sheet was filed. After commencement of trial and recording the evidence of P.Ws.1 to 3, the first respondent-Police came to know

Page No.3/11



CrI.R.C.No.755 of 2023

that the revision petition is also involved in the case and therefore, they have invoked Section 319 Cr.P.C. The learned Magistrate considered the deposition of P.Ws.1 to 3 and also the Birth Certificate and Aadhar Card of the revision petitioner and the Birth Certificate of the child born to the revision petitioner. The learned Magistrate came to the conclusion that the revision petitioner was also involved in the case and therefore, they have filed the petition invoking Section 319 Cr.P.C. The learned Magistrate, after considering the entire materials, allowed the petition partially and directed to implead the revision petitioner as also one of the accused, namely A2. There is no merit in the revision petition and the same is liable to be dismissed.

5. Heard both sides and perused the materials available on record.

6. The case of the prosecution is that the de-facto complainant gave a complaint to the first respondent-Police, based on which, the first respondent-Police registered a case in Crime No.15 of 2021 against the first accused for the offences under Sections 498-A and 506 (Part-2) IPC. After investigation, charge-sheet was also filed by the Police before the Magistrate and it was taken on file in C.C.No.833 of 2022. Subsequently, after framing charges, the trial Court commenced trial and examined three witnesses, i.e. P.Ws.1 to 3 and at that stage, the first respondent-Police filed a petition in C.M.P.No.8549 of 2023 in C.C.No.833 of 2022 invoking Section 319 Cr.P.C. to implead the revision



CrI.R.C.No.755 of 2023

petitioner and others in this case as accused, since they were alleged to have committed the offence under Section 494 IPC being bigamy. During the subsistence of the first marriage, A1 married the revision petitioner and gave birth to a child and in order to prove the same, copy of the Birth Certificate of the child born to the revision petitioner, was also produced and also the Aadhar Card was also produced, and the Birth Certificate of the child, show that the revision petitioner and A1 were shown as biological parents of the child and even in the Aadhar Card, the address of A-1 was given. The trial Court found that there are prima-facie materials against the revision petitioner/A2, the father of A1, i.e. Nagaraj, mother of the accused, i.e. Rajalakshmi, sister - Jayalakshmi, the sister's husband of A1, i.e. Mohan Kumar, except one Jothiprakash, who is a relative of A1. Challenging this order, the revision petitioner/A2 has filed the present revision petition.

6. One of the grounds taken by the learned counsel for the revision petitioner is that as per Chapter 20 of IPC, the complaint has to be filed by the person aggrieved by the offences and the Police has no locus-standi to file any petition in this case.

7. At this juncture, it is useful to extract Section 319 Cr.P.C. as follows:

Page No.5/11



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CrI.R.C.No.755 of 2023

Section 319 Cr.P.C: Power to proceed against other persons appearing to be guilty of offence--(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then --

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

8. At any stage, if the Court finds that any person other than the persons who have been arrayed as accused, have also been involved in the case, and

Page No.6/11



CrI.R.C.No.755 of 2023

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they can be summoned and impleaded as accused. Therefore, in this case, on a reading of the allegations made in the complaint and also the statement recorded by the Police under Section 161 Cr.P.C. and also the deposition of P.Ws.1 to 3, it clearly shows that the revision petitioner is also alleged to have been involved in the case and however, unfortunately, the first respondent-Police had not shown the revision petitioner as an accused, whereas, on a reading of the complaint, FIR and the statement recorded under Section 161 Cr.P.C., and the deposition of the witnesses, it is clear that the revision petitioner is also involved in the case and even the records produced by the prosecution shows that the Birth Certificate and the Aadhar Card of the child of the petitioner, are sufficient materials to connect the revision petitioner also.

9. As far as Section 198 Cr.P.C. and Chapter 20 of the Cr.P.C., it is clear that the complaint has to be made by the aggrieved person, whereas in this case, the case was registered based on the complaint given by the de-facto complainant, who is none other than the first wife of A1 and she is victim as well as interested person who has made complaint that when the husband left the matrimonial home and when the de-facto complainant had telephoned A1 and at that time, the revision petitioner picked up the phone and informed that she is the wife of A1.

Page No.7/11



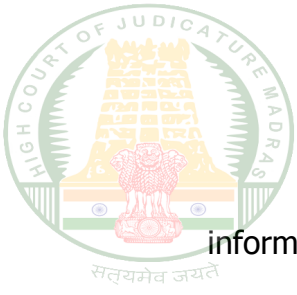
CrI.R.C.No.755 of 2023

WEB COPY 10. Further, even in the statement made before the Police under Section 161 Cr.P.C. and also the deposition of witnesses by P.W.1/de-facto complainant, it is clear that she has made allegations against the revision petitioner.

11. Therefore, prima-facie, it shows that the revision petitioner is also alleged to have been involved in this case. Since in the complaint itself, P.W.1 stated that when she telephoned A1, at that time, the petitioner picked up the phone and stated that she is the wife of A1. Based on the complaint of the de-facto complainant who is the wife of A1, the first respondent-Police registered a case and investigated and laid the charge-sheet. Once the charge-sheet is filed, it is the prosecution which has to take care of it and proceed with the case further and prove the case. The de-facto complainant has nothing to do with the same. At best, they can only assist the prosecution.

12. Therefore, even after the de-facto complainant has not stopped with the allegations of the second marriage in the complaint, but she further even from the statement recorded by the investigating officer under Section 161(3) Cr.P.C., she reiterated the allegations and even further during the course of tendering evidence, she has deposed the same thing that the revision petitioner

Page No.8/11



CrI.R.C.No.755 of 2023

informed over phone that she is the wife of A1. Considering the same, the first respondent brought it to the notice of the Court to invoke Section 319 Cr.P.C. and implead the revision petitioner also as one of the accused persons. Even otherwise, under Section 319 Cr.P.C., the Court can suo-motu issue summons, as sufficient materials are available in the case records.

13. Therefore, considering the facts and circumstances of the case, and the materials, this Court finds that there are sufficient materials available to implead the revision petitioner also as one of the accused.

14. There is no merit in the revision petition and the contentions raised by the learned counsel for the revision petitioner are not sustainable in law.

15. For all the above reasons, this Court does not find any merit in this revision petition, which is liable to be dismissed. Accordingly, the revision petition is dismissed. Consequently, the miscellaneous petition is closed.

16. However, the grounds taken by the revision petitioner are nothing but the defences which can be raised by the revision petitioner during the course of trial and not at this stage.

27.03.2025

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Page No.9/11



Crl.R.C.No.755 of 2023

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1. The Judicial Magistrate, Additional Mahila Court, Coimbatore.
2. The Section Officer, Criminal Section (Records), High Court, Madras.
3. The Inspector of Police, AWPS Thidiyalur Police Station, Coimbatore District.



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Crl.R.C.No.755 of 2023

P.VELMURUGAN, J

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Pre-delivery Order in
Crl.R.C.No.755 of 2023

Orders pronounced on 27.03.2025

Page No.11/11