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Crl.R.C.No.838 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.838 of 2023

T.Perumal

... Petitioner

Vs.

1. P.Bhuvaneswari
2. S.Manikandan
3. A.Palani
4. P.Seerangammal

... Respondents

Prayer: Criminal Revision Case filed under Section 397 read with 401 Cr.P.C. to set aside the dismissal order of Judicial Magistrate, Omalur passed in Crl.M.P.976 of 2023 on 10.04.2023.

For Petitioner	: Mr.P.Praveen Kumar
For Respondents 1, 3 and 4	: Mr.W.Camyles Gandhi
For 2 nd Respondent	: Mr.B.Sundarapandiyan



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ORDER

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This Criminal Revision Case has been filed by the petitioner to set aside the dismissal order of the Judicial Magistrate, Omalur passed in Crl.M.P.No.976 of 2023 on 10.04.2023.

2. The case of the petitioner is that the petitioner and the 1st respondent got married on 14.02.2013 and it was an arranged marriage. Thereafter, due to matrimonial dispute, the 1st respondent left the matrimonial home and in order to harass the petitioner, filed a maintenance case in M.C.No.34 of 2013 before the Judicial Magistrate-I, Tambaram, claiming maintenance. Though the petitioner filed a H.M.O.P. No.51 of 2014 for restitution of conjugal rights, the same was dismissed for non prosecution on 17.12.2015 since, the petitioner could not follow up his counsel due to several physical ailments. Therefore, due to the cruel harassment of the 1st respondent, the petitioner filed a divorce petition in H.M.O.P.171 of 2022 before the Subordinate Court, Omalur on the



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ground of cruelty and the same is pending. While both the maintenance and divorce cases are pending before the respective Courts, the petitioner came to know that the 1st respondent had illegally performed second marriage with one Manikandan/2nd respondent herein and a child was also born to them on 29.09.2022 in Subam Hospital situated at Edanganasalai, Elampillai. Therefore, on 28.01.2023, the petitioner sent a complaint before the police to take necessary action against the respondents and one of such complaint is pending before the Department of Social Welfare. Further, the petitioner filed a private complaint on 09.03.2023 before the Judicial Magistrate, Omalur in C.M.P.No.976 of 2023 against the respondents. However, the trial Court without summoning the accused, dismissed the complaint on 10.04.2023 stating that the petitioner has not proved the alleged second marriage. Against which, the present revision is filed.

3.The learned counsel for the petitioner submitted that while the first



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marriage between the petitioner and the 1st respondent was subsisting, the 1st

respondent married the 2nd respondent and thereby, they have committed the offence under Section 494 IPC. The respondents 3 and 4 who are the parents of the 1st respondent abetted the performance of second marriage and thereby, the have committed the offence under Section 109 of IPC. The 1st respondent through the second marriage has delivered a child. Though the petitioner produced the copy of the birth certificate of the child before the trial Court wherein it is clearly stated that the accused/respondents 1 and 2 are parents of the child, the trial Court failed to consider the same. Further, the 1st respondent applied for a Maternity Benefit Scheme for receiving welfare funds wherein also, it is categorically mentioned that her husband name is "Manikandan"/2nd respondent herein. Therefore there is prima facie allegations against the respondents. However, the learned Magistrate failed to take into consideration of the averments/allegations levelled in the complaint and simply dismissed the petition on the ground that the petitioner has not proved the ingredients of



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bigamous marriage.

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4. The learned counsel for the respondent 1, 3 and 4 submitted that the 1st respondent is the wife of the petitioner. The respondents 3 and 4 are father and mother of the 1st respondent. Though the petitioner pleaded adulterous conduct of the 1st respondent, there is no ingredients to show bigamous marriage between the 1st and 2nd respondent and therefore, the learned Magistrate rightly dismissed the petition and there is no merit in this revision.

5. Heard and perused the materials available on record.

6. It is seen that the petitioner/complainant made a complaint that while the divorce petition was pending, without obtaining divorce by due process of law, the 1st respondent performed second marriage with the 2nd respondent and also given birth to a child. The government records namely the birth



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certificate and application filed by the 1st respondent for availing Government

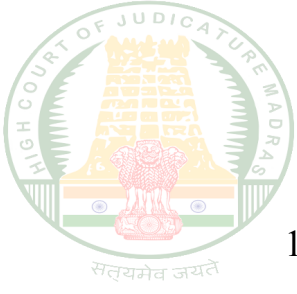
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Scheme strengthen the allegations of the petitioner wherein, the respondents 1 and to have been shown as biological father and mother of the child.

7. Therefore, a reading of the materials and also the complaint filed by the petitioner shows prima facie allegations against the respondents. At the time of taking cognizance of a complaint, the Court has to see prima facie allegations levelled against the accused and the Court need not search for proof of documents or materials, which can be decided after enquiry/trial.

8. A thorough reading of the complaint filed by the petitioner, this Court finds that there are prima facie allegations regarding bigamous marriage between the 1st and 2nd respondents.

9. Therefore, the order passed by the Magistrate in Crl.M.P.976 of 2023 dated 10.04.2023 is set aside.



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10. The Magistrate is directed to take cognizance of the complaint and issue summons to the respondents and conduct trial and decide the matter in accordance with law, after giving opportunity to both the parties.

11. With the above directions, this Criminal Revision Case is allowed.

18.03.2025

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No
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To
The Judicial Magistrate,
Omalur



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P.VELMURUGAN. J.

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