



Crl.R.C.(MD)No.521 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 23.04.2025

Pronounced on : 04.08.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.521 of 2025

and

Crl.M.P.(MD)No.5373 of 2025

Muniyappan

... Petitioner/
Petitioner/
Sole accused

Vs.

State through
The Inspector of Police,
All Women Police Station,
Usilampatti,
Madurai District.
(Crime No.8 of 2017)

... Respondent/
Respondent/
Complainant

Prayer : This Criminal Revision Case filed under Section 438 r/w 442 B.N.S.S., to call for the records pertaining to the order dated 23.10.2024 made in Crl.M.P.No.578 of 2024 on the file of the learned District Munsif cum Judicial Magistrate No.1, Usilampatti and set aside the same by allowing the above revision petition.



Crl.R.C.(MD)No.521 of 2025

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For Petitioner : Mr.S.Harish
for Mr.B.Arun

For Respondent : Mrs.M.Aasha
Government Advocate (Crl. Side)

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.578 of 2024 in C.C.No.42 of 2021 dated 23.10.2024 on the file of the Court of the District Munsif cum Judicial Magistrate No.1, Usilampatti, dismissing the petition for discharge filed under Section 239 of the Code of Criminal Procedure.

2. The petitioner is the 10th accused in C.C.No.42 of 2021 on the file of the District Munsif cum Judicial Magistrate No.1, Usilampatti.

3. On the basis of the complaint lodged by one Muthulakshmi, FIR came to be registered in Crime No.8 of 2017 dated 10.03.2017 against 11 persons including the petitioner for the alleged offences under Sections 498(A), 109, 506(1), 494 and 294(b) IPC and Section 4 of Dowry Prohibition Act. The respondent, after completing the investigation, has laid the final report against 11 persons including the petitioner for the



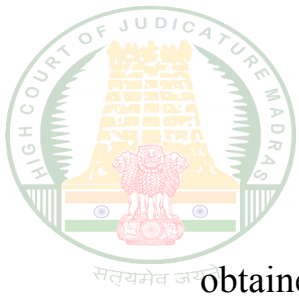
Crl.R.C.(MD)No.521 of 2025

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alleged offences under Sections 498(A), 109, 506(1), 494 and 294(b) IPC and Section 4 of TN Prohibition of Harassment of Women Act, 2002 and the case was taken on file in C.C.No.42 of 2021 and is pending on the file of the District Munsif cum Judicial Magistrate No.1, Usilampatti. When the calendar case was pending for framing of charges, the petitioner/10th accused, invoking Section 239 Cr.P.C. has filed the above petition seeking discharge from the above case.

4. Admittedly, the marriage between the defacto complainant and the first accused Thavamani was solemnized on 18.09.1996 and the accused 2 and 3 are the parents of the first accused.

5. The case of the prosecution is that the accused 1 to 3 had demanded more money and jewels as additional dowry, that the accused 4 to 7 had also instigated the first accused to demand Rs.1 lakh for getting othi and since the same was not given, the accused 1 to 3 had sent the defacto complainant out of the matrimonial home, that divorce petition filed by the first accused in H.M.O.P.No.194 of 2005 came to be dismissed, that the defacto complainant has filed a maintenance case and



Crl.R.C.(MD)No.521 of 2025

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obtained an award and against the same, revision is pending before the Madurai Bench of Madras High Court, that when the defacto complainant after attending the Court hearing was returning at about 11.00 a.m. on 07.08.2015, the accused 1 and 2 waylaid the defacto complainant, abused her in filthy language, attacked her and caused criminal intimidation and on the basis of the complaint lodged, FIR came to be registered in Crime No.251 of 2015 on the file of the Othakadai Town Police and is pending, that in the meanwhile, the first accused with the help of other accused and during the subsistence of the first marriage, had married the 11th accused-daughter of the accused 8 and 9 and sister of the petitioner, that the first accused and the 11th accused started to reside at Tiruppur and the 11th accused had delivered a male child on 05.10.2016 at Government Hospital Tiruppur and that therefore the first accused had committed the offences under Sections 498(A), 494, 294(b) and 506(1) IPC and Section 4 of TNPHW Act, the second accused had committed the offences under Sections 498(A), 294(b), 506(1) and 109 IPC and Section 4 of TNPHW Act, the accused 3, 4 and 6 had committed the offences under Sections 498(A) and 109 IPC, the accused 5 and 7 had committed the offences under Sections 498(A) and 109 IPC and Section 4 of TNPHW Act and the



Crl.R.C.(MD)No.521 of 2025

accused 8 to 11 had committed the offence under Section 109 IPC.

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6. The main charge levelled against the petitioner herein is that he abetted the other accused for the commission of offence under Section 494 IPC.

7. Before entering into further, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***State by the Inspector of Police, Chennai Vs. S.Selvi and another*** reported in ***(2018) 13 SCC 455***.

“7. It is well settled by this Court in catena of judgments including the cases of Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4, Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135, Sajjan Kumar v. CBI (2010) 9 SCC 368, State v. A.Arun Kumar (2015) 2 SCC 417, Sonu Gupta v. Deepak Gupta (2015) 3 SCC 424, State of Orissa v. Debendra Nath Padhi (2003) 2 SCC 711, Niranjana Singh Karan Singh Punjabi vs. Jitendra Bhimraj Bijjaya (1990) 4 SCC 76 and Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja (1979) 4 SCC 274 that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted



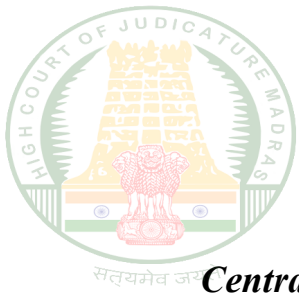
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Crl.R.C.(MD)No.521 of 2025

power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial”

8. It is also necessary to refer the judgment of the Hon'ble Supreme Court in ***Vikramjit Kakati Vs. The State of Assam*** reported in **2022 AIR SC 3597**, wherein, the Hon'ble Apex Court has referred the principles laid down by the Hon'ble Supreme Court in ***M.E.Shivalingamurthy Vs.***



Crl.R.C.(MD)No.521 of 2025

WEB COPY

Central Bureau of Investigation, Bengaluru reported in **(2020) 2 SCC**

768 and the relevant principles are extracted hereunder:-

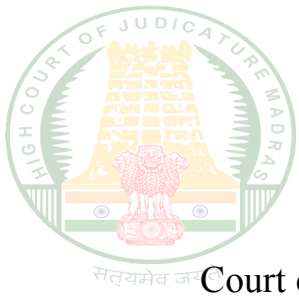
“10....

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.”

9. It is settled law that at the stage of framing charges, the Court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused and the Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

10. It is also settled law that while considering an application seeking discharge from a case, the Court is not expected to go deep of the probative value of the material on record, but on the other hand, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, and for that purpose, the



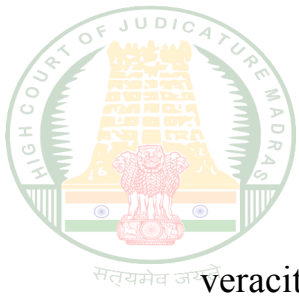
Crl.R.C.(MD)No.521 of 2025

WEB COPY

Court cannot conduct a roving enquiry into the pros and cons of the matter and weigh the evidence as if it is a main trial. Bearing the above legal position on mind, let us consider the case on hand.

11. The case of the petitioner canvassed in the discharge petition is that the respondent police has recorded statements under Section 161(3) Cr.P.C. from as many as 11 witnesses and there is absolutely no averment against the petitioner and not even his name is found place in the said statements to connect the petitioner remotely with the alleged offence and that perusal of all the documents filed along with the charge sheet would go to show that there exists no ground for the presumption of commission of offence and there is no suspicious circumstances against the petitioner so as to frame charge against him as such the accusation is frivolous and there is absolutely no material to proceed against the petitioner.

12. The respondent police has filed a counter statement before the learned Magistrate raising objections stating that the petitioner is none other than the brother of the 11th accused, who married the first accused during the subsistence of the first marriage of the first accused, that the



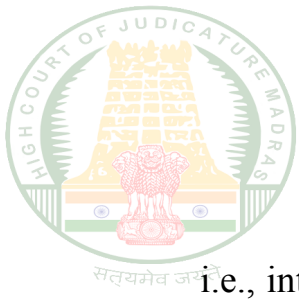
Crl.R.C.(MD)No.521 of 2025

WEB COPY

veracity of the charges levelled against the petitioner can be ascertained only during trial and the same cannot be gone into at this stage and that therefore, the petition is liable to be dismissed.

13. The learned Magistrate has referred to the statement recorded under Section 161(3) Cr.P.C. from 3 witnesses L.W.10 Laxmanan, L.W.11 Raja and L.W.12 Ayyanar and all the said three witnesses would say that they had witnessed the marriage between the first accused and the 11th accused and when the same was questioned, they were criminally intimidated. As rightly contended by the learned counsel appearing for the petitioner, the said witnesses in their statements have nowhere stated that the petitioner was available in the place where the said marriage had occurred.

14. Section 109 IPC defines that an act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment. Abetment can take the form of instigation, conspiracy or aiding. It is pertinent to mention that *mens rea*



Crl.R.C.(MD)No.521 of 2025

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i.e., intention to commit an act is an important element so as to attract the abetment. The prosecution has to show that the accused must have intentionally done something which amounted to instigation for another to do an illegal act. For constituting an act of abetment by conspiracy, there must be two or more people involved in the conspiracy and an illegal act must take place in pursuance of that conspiracy. The third clause is abetment by intentional aiding to do an illegal act or omission of a legal act and the abettor facilitates or helps in committing the crime. In the case on hand, neither the defacto complainant nor any other witnesses would say that the petitioner had abetted the other accused for the commission of bigamy offence.

15. At this juncture, it is necessary to refer the judgment of this Court in ***S.Saraswathi and others Vs. Sumathi (Crl.O.P.No.2786 of 2017 dated 18.08.2021)*** and the relevant passages are extracted hereunder:-

“21.On a careful reading of the facts narrated in the complaint, it could be noticed that the marital life of the respondent/complainant with S.Kanagasabapathy (A1) got strained, which culminated into several matrimonial proceedings between the respondent and her husband, and the respondent started living with her parents. While that



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Crl.R.C.(MD)No.521 of 2025

being so, the situation became tough when the respondent came to know through her father's friend N.Sivakumar that her husband (A1) married one S.Rajeshwari (A2) in the presence of A3 to A7, even while the marriage between the respondent and A1 was in subsistence. The allegations against the petitioners in the complaint have been made entirely based on the hear-say information received from the said N.Sivakumar. To be noted, the respondent had no personal knowledge of the alleged second marriage, nor was she present at the place of occurrence. The respondent has stated that the second marriage was conducted as per Hindu Rites and Customs. Therefore, it is quite common in a Hindu Marriage that the new couple exchange garlands and fall at the feet of the parents to seek blessings and be gifted with bouquets and presents. In Muthammal v. Maruthathal (supra), it is held that, mere presence of the accused persons during the second marriage, even knowing that it is a bigamy, and blessing the couple by throwing sacred rice over them, would not amount to abetment or instigation of the second marriage. Nevertheless, in the instant case, the only overt act against the Mother-in- Law, being the mother of A1, is that, she had just blessed the couple, much less throwing sacred rice on them. The allegation made against the Brother- in-Law (A3) is that he gave garlands to A1 and A2, who exchanged them for each other, and thereafter, A3 and A4



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Crl.R.C.(MD)No.521 of 2025

presented a small bouquet to the couple. However, no witness has been examined to prove the said allegations against A3 and A4. On a whole, the overt acts as alleged by the respondent in her complaint against the petitioners are only in the nature of facilitating the performance of marriage and even assuming the allegations are true, there is no iota of evidence nor any proof to the effect that they have instigated or conspired or abetted the bigamy of A1 with A2.”

16. The Hon'ble Supreme Court in ***S.Nitheen and others Vs. State of Kerala and another*** reported in ***2024 LiveLaw (SC) 385*** has held that the charge under the offence of bigamy can be framed only against the spouse to the second marriage and by the mere presence of friends and relatives in the second marriage, it cannot be held that they had the common intention to commit the offence of bigamy unless the complainant *prima facie* proves the overt act or omission of the accused persons and also establish that such accused were aware about the subsisting marriage and the relevant passage is extracted hereunder:-

“17. The appellants herein are being roped in by virtue of Section 34 IPC with the allegation that they had the common intention to commit the offence under Section



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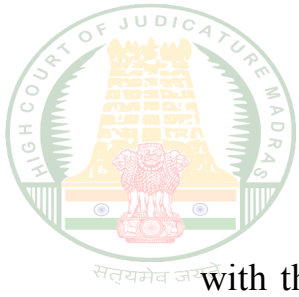


Crl.R.C.(MD)No.521 of 2025

494 IPC. In order to bring home the said charge, the complainant would be required to prima facie prove not only the presence of the accused persons, but the overt act or omission of the accused persons in the second marriage ceremony and also establish that such accused were aware about the subsisting marriage of Ms. Lumina(A-1) with the complainant.”

17. In the present case, as rightly contended by the learned counsel appearing for the petitioner, there is no evidence to suggest that the petitioner was aware of the first accused's subsisting marriage or that he actively participated in the second marriage ceremony. Notably, none of the witnesses named the petitioner. Mere association as the brother of the 11th accused is insufficient to implicate him in abetment. However, the learned Magistrate failed to consider these factual aspects properly and instead relied mechanically on the statements of three witnesses, presuming the petitioner's knowledge of the marriage. Based on this flawed approach, the learned Magistrate found *prima facie* material to frame charges against the petitioner and dismissed the petition.

18. Considering the charge sheet and also the statements filed along



Crl.R.C.(MD)No.521 of 2025

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with the charge sheet and other materials available on record, this Court has no hesitation to hold that there are absolutely no materials sufficient enough to proceed further and to frame charges against the petitioner and that the charges allegedly levelled against the petitioner are groundless and as such, the petitioner is entitled to be discharged from the above case. Consequently, this Court concludes that the impugned order dismissing the discharge petition is liable to be set aside.

19. In the result, this Criminal Revision Case stands allowed and the impugned order dated 23.10.2024 passed in Crl.M.P.No.578 of 2024 in C.C.No.42 of 2021 is hereby set aside. The petitioner shall stand discharged in C.C.No.42 of 2021 on the file of the District Munsif cum Judicial Magistrate No.I, Usilampatti. Consequently, connected Miscellaneous Petition is closed. No costs.

04.08.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
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Crl.R.C.(MD)No.521 of 2025

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- 1.The District Munsif cum Judicial Magistrate No.I,
Usilampatti.
- 2.The Inspector of Police,
All Women Police Station,
Usilampatti,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.R.C.(MD)No.521 of 2025

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
Crl.R.C.(MD)No.521 of 2025
and
Crl.M.P.(MD)No.5373 of 2025

Dated : 04.08.2025