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CrI.O.P.(MD).No.19701 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

DATED : 30.01.2025

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

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1.Bahrudeen @ Bahurudeen
S/o.Jamal Mohamed

2.Anas @ Mohamed Anas
S/o. Kader Mohideen

3.Rosiya @ Rozia
W/o.Ahamed Anas

4.Naina Mohamed
S/o.Jamal Mohamed

5.Nasim Begam @ Naseem Begam
W/o.Naina Mohamed

6.Nasira & Naseera
D/o. Sahabudeen

7.Mohamed Rafik @ Mohamed Rafeek
S/o.Sahul Hameed

... Petitioners/Accused

Vs.



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1.The State of Tamil Nadu,
Rep.by the Inspector of Police,
All Women Police Station – Pattukottai
Thanjavur District.
(Crime No.2 of 2021)

... Respondent 1 / Complainant

2.Rafeekka Ammal
W/o.Bahurudeen

... Respondent 2 / De-facto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records pertaining to Charge Sheet CC.No.44/2022 on the file of the Hon'ble Judicial Magistrate, Pattukottai and quash the same as illegal.

For Petitioners	: Mr.Anto Prince.G Advocate
For R1	: Mr.A.Albert James Government Advocate (Crl.Side)
For R2	: Mr.M.U.Mohamed Aslam for M/s.Ajmal Associates

ORDER

This Criminal Original Petition has been filed to quash the proceedings in CC.No.44/2022 on the file of the Hon'ble Judicial Magistrate, Pattukottai.

2. The case of the Prosecution is that the respondent No.2, married the petitioner No.1, 26 years ago and they had a daughter through their marriage. It is alleged that the petitioners treated the respondent No.2



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with cruelty and also demanded for dowry, to be brought from her parental house. Subsequently, when this cruelty was continuing, the petitioner No.1 married the petitioner No.6, and the other accused persons aided in the conduct of the second marriage. Based on the complaint given by respondent No.2, an FIR came to be registered in Cr.No.2 of 2021. On completion of investigation, the Police report has been filed before the Judicial Magistrate, Pattukottai, as against A1 to A7. Insofar as A1 is concerned, it has been filed for the offences under Sections 498 (A), 294 (b), 494, 506 (1) read with Section 147 of Indian Penal Code, 1860. Insofar as A2 to A7 are concerned, it has been filed under Section 494 read with Section 147 of the Indian Penal Code, 1860. The Court below has taken cognizance of the offence and issued process to the Petitioners. Aggrieved by the same, the present quash petition has been filed before this Court.

3. Heard Mr.Anto Prince.G, learned Counsel for the Petitioners and Mr.A.Albert James, learned Government Advocate (Crl.Side) for the respondent No.1 and Mr.M.U.Mohamed Aslam for M/s.Ajmal Associates for respondent No.2.



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4. The main grounds urged before this Court is that even if the entire allegations made in the Police report is taken as it is, no offence under Sections 498 (A), 294 (b), 494, 506 (1) read with Section 147 of Indian Penal Code, 1860 has been made out against A1. The other ground is that the charge under Section 494 read with Section 147 of IPC is not sustainable since, the Parties belong to Muslim Religion and it permits marrying more than one wife.

5. This Court will first take the second ground that has been raised on the side of the Petitioners. The allegation is that the petitioner No.1, married the petitioner No.6, when the first marriage was in subsistence. In order to sustain a charge under Section 494 read with Section 147 of the Indian Penal Code, 1860, the second marriage must be rendered as void. Insofar as the Muslim Personal Law is concerned, it permits a Mohammedan to take four wives together. In view of the same, the second marriage *per-se* cannot be held to be void and consequently, the offence under Section 494 read with Section 147 of the Indian Penal Code, 1860 will not be attracted.



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6. This Court can make useful reference to the judgment of the Hon'ble Kerala High Court in ***Riyas Ali and Ors. Vs. Muneera and Anr*** in [Crl.M.C.No.7482 of 2017 dated 11.12.2018]. The next judgment that can be relied upon is that of the judgment of the Hon'ble Bombay High Court in ***Kalim Shaikh Munaf and Ors. Vs. The State of Maharashtra and Anr*** in [Criminal Application No.2255 of 2019 dated 03.01.2022]. Both these judgments categorically hold that insofar as Muslim Male is concerned, the second marriage *per-se* is not void and hence, the offences under Section 494 read with Section 147 is not attracted. This Court is in agreement with the above judgments.

7. In the light of the above discussion, the charge against A2 to A7 for offences under Section 494 read with Section 147 of the Indian Penal Code, 1860 is not sustainable and the same requires the interference of this Court.

8. Insofar as A1 is concerned, the charge under Section 494 read with Section 147 of the Indian Penal Code, 1860 is not sustainable. However, respondent No.2 has made *prima-facie* allegations against the petitioner No.1 (A1) which constitute offences for which the final



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report has been filed against A1. Hence, A1 has to face the Trial and establish his defence.

9. In the result, the proceedings in CC.No.44/2022 on the file of the Hon'ble Judicial Magistrate, Pattukottai is hereby quashed, insofar as A2 to A7 are concerned. The proceeding should continue as against A1 for the offences under Sections 498 (A), 294 (b), 494, 506 (1) read with 147 of Indian Penal Code, 1860. It is left open to A1 to raise all the grounds before the Trial Court and the same shall be considered on its own merits and in accordance with law. The proceedings in CC.No. 44/2022 on the file of the Hon'ble Judicial Magistrate, Pattukottai shall be completed within a period of four (4) months from the date of receipt of copy of this order. The learned Counsel for the Petitioner made a request for dispensing with the personal appearance of A1. Considering the same, the appearance of A1 is dispensed with and he shall be represented through a Counsel. A1 shall be present before the Court below at the time of framing of charges, at the time of questioning of 313 (1) (b) of Cr.P.C, at the time of passing of final judgment and as and when required by the Trial Court. The Counsel appearing for the petitioner No.1/A1 shall cross-examine the witnesses on the same day, when they are examined in chief and A1 shall not



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question the identity of any witness.

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10. In view of the above, this Criminal Original Petition stands partly allowed.

30.01.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

- 1.The Judicial Magistrate,
Pattukottai.
- 2.The Inspector of Police,
All Women Police Station,
Pattukottai
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH, J.

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