

Thimmappa Vs. Smt. Bharathi

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Court : Karnataka

Decided On : Mar-13-2024

Judge : Suraj Govindaraj

Appeal No. : CRL.P 7517/2017

Appellant : Thimmappa

Respondent : Smt. Bharathi

Advocate for Def. : Sri. Jagruth

Advocate for Pet/Ap. : Sri. Praveen C

Judgement :

- 1 - NC:

2024. KHC:10412 CRL.P No.7517 of 2017 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE13H DAY OF MARCH, 2024 BEFORE THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ CRIMINAL PETITION No.7517 OF 2017 BETWEEN:

1. THIMMAPPA, AGED ABOUT60YEARS, S/O. SANNA YELLAPPA, 2. KAALAMMA, AGED ABOUT55YEARS, W/O. THIMMAPPA, 3. MANGALA. H.T, AGED ABOUT25YEARS, D/O. THIMMAPPA, ALL ARE RESIDENTS OF A.K. COLONY, HULUGINDI, KADUR TALUK, CHIKMAGALUR DISTRICT - 577 548.

PETITIONERS (BY SRI. PRAVEEN C, ADVOCATE) AND: SMT. BHARATHI, AGED ABOUT 34 YEARS, W/O. P. RAJAKUMARA, RESIDING AT STAFF NURSE, DISTRICT HOSPITAL, CHITRADURGA - 577 501. RESPONDENT (BY SRI. JAGRUTH, ADVOCATE FOR SRI. RAHUL RAI K, ADVOCATE) THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.1115/2016 FOR AN ALLEGED OFFENCE P/U/S420 494 OF IPC NOW PENDING ON THE FILE OF - 2 - NC:

2024. KHC:10412 CRL.P No.7517 of 2017 THE II ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, CHITRADURGA AGAINST THE PETITIONERS. THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1 The petitioners are before this Court seeking for the following reliefs:

"Wherefore, it is prayed that this Hon'ble Court be pleased to quash the entire proceedings in C.C.No.1115 /2016 for an alleged offence punishable under section 420 & 494 of the Indian Penal Code, now pending on the file of the II Additional Civil Judge and JMFC Chitradurga against the Petitioners, in the interest of justice.

2. The respondent filed a private complaint before the JMFC, Chitradurga in P.C.R.No.626/2015 against one P.Rajakumara alleged to be her husband, one H.T.Maala alleged to be second wife, one Ravi a friend of P.Rajakumara and the petitioners herein are the mother, father and the sister of the said P.Rajakumara of H.T.Maala.

3. It is alleged that the complainant is the first wife of P.Rajakumara and during the subsistence of the said marriage, Sri. P.Rajakumara married H.T.Maala and as such, he has committed an offence. Accused Nos.3 to 6 therein have been made parties to the said proceedings on the ground that they have participated in the marriage - 3 - NC:

2024. KHC:10412 CRL.P No.7517 of 2017 ceremony of the complainant and accused Nos.1 and 2, knowing fully well of the subsistence marriage between the complainant and respondent No.1. It is challenging the same, the petitioners are before this Court seeking for the aforesaid reliefs.

4. Learned counsel for the petitioners would submit that the petitioners, being the father, mother and sister of the alleged second wife, cannot be prosecuted under Section 494 of IPC inasmuch as the prosecution contemplated therein is only as regards the person who has committed the said offence. Merely because the petitioners have participated in the wedding ceremony, they cannot be prosecuted for the offences punishable under Section 494 of IPC.

5. Learned counsel for respondent No.2 would, however, submit that though the offences alleged are under Sections 420 and 494 of IPC, the Trial Court could always take into consideration the evidence which has led, introduce the charge under Section 506 of IPC for abetment and as such, at this stage, this Court ought - 4 - NC:

2024. KHC:10412 CRL.P No.7517 of 2017 not to intercede in the matter. His submission is also that the petitioners herein who are accused Nos.4 to 6 therein had knowing fully well of the subsistence of the marriage between the complainant and accused No.1 participated in the said wedding, if they had not participated and felicitated the wedding, the wedding would not have taken place, and thereby the offence under Section 494 of IPC would not have taken place. On this ground, he submits that the above petition is required to be dismissed.

6. Heard Sri. Praveen C., learned counsel for the petitioner, Sri. Jagruth, learned counsel for the respondent and perused papers.

7. Section 494 of IPC reads as under:

"Marrying again during lifetime of husband or wife.-Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years,

and shall also be liable to fine.

8. A perusal of Section 494 of IPC would indicate that whoever, having a husband or wife living, marries during the life of such husband or wife shall be punished with - 5 - NC:

2024. KHC:10412 CRL.P No.7517 of 2017 imprisonment of either description for a term which may extend for seven years. Though there are certain exceptions which have been provided those exceptions would not be attracted in the present case.

9. What is important for this Court to consider is that in terms of Section 494 of IPC it is only the person who marries during the subsistence and the life time of the earlier spouse and the earlier marriage could be prosecuted and punished for the offences punishable under Section 494 of IPC.

10. The said provision does not even contemplate the person to whom the husband or wife has married to be prosecuted under Section 494 of IPC. Let alone the father, mother and sister who had participated in or attended the wedding. The only allegation made in the complaint at "paragraph 7" is that accused Nos.3 to 6 have knowledge of the marriage of accused Nos.1 and 2 is illegal and despite which they have participated. There is no averment made therein that they were aware of the subsisting marriage between the complainant and accused No.1 or further, there is no allegation made as - 6 - NC:

2024. KHC:10412 CRL.P No.7517 of 2017 regards the intention on part of accused Nos.3 to 6 having involved themselves in a offence punishable under Section 494 of IPC or facilitated or abated the said offence.

11. In that view of the matter, I am of the considered opinion that in terms of Section 494 of IPC as is clear from the mere reading of the said provision, it is only the husband and wife who marries for the second time during the subsistence of an earlier marriage and the life time of the earlier spouse who can be prosecuted and not the petitioners herein. As such, I pass the following: ::

ORDER

:: i) The petition is allowed. ii) The proceedings in C.C.No.1115/2016 insofar as the petitioners who are accused Nos.4 to 6 therein are quashed. Sd/- JUDGE GJM
List No.:

1. Sl No.:

29. CT: BHK

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