

**Jayaram Vs. Vijayamma**

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**SooperKanoon Citation :** [sooperkanoon.com/727925](http://sooperkanoon.com/727925)

**Court :** Kerala

**Decided On :** Aug-22-2001

**Reported in :** 2001(2)ALT(Cri)452

**Judge :** M.R. Hariharan Nair, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 23 and 496

**Appeal No. :** Crl. R.P. No. 1123 of 1999

**Appellant :** Jayaram

**Respondent :** Vijayamma

**Advocate for Def. :** S. Vijayakumar, Adv. and;Thavamani (Public Prosecutor)

**Advocate for Pet/Ap. :** T.R. Raman Pillai, Sr. Adv. and; C.C. Thomas, Adv.

**Disposition :** Petition disposed of

**Judgement :**

ORDER

**M.R. Hariharan Nair, J.**

1. The accused in C.C. No. 89 of 1994 of the Chief Judicial Magistrate Court, Alappuzha is aggrieved that based on a private complaint filed by the first respondent herein charge under S. 496 of the IPC has been framed against him.

2. In the complaint filed before the trial court on 31.10.1990, the respondent, who is a professor in English in the S.N. College, Cherthala, alleged that during the pendency of her marriage with one P.R.R. Babu who was her colleague in the same college, the present petitioner made advances to her which ultimately resulted in the performance of a customary marriage on 17.9.1975 at the residence of one Sadanandan, who was a close friend and relative of the petitioner; that the accused was fully aware of the fact that the said marriage was not a legal one in so far as both parties thereto had been legally married earlier and that through the petitioner and the first respondent lived together as husband and wife until 1988, the first respondent has abandoned her thereafter.

3. Shri. T.R. Raman Pillai, who appeared for the revision petitioner, submitted that even accepting the averments in the complaint as correct, there is no scope for framing charge against the revision petitioner in so far as the ingredients of S. 496 of the IPC have neither been pleaded nor spoken to before the trial court. According to him, the circumstances of the case as revealed in the petition itself would disclose that there was no possibility of the alleged statements of the revision petitioner being believed by the complainant and as such there was no dishonest or fraudulent intention on the part of the revision petitioner, which led to the ceremony of being married.

4. According to the learned counsel for the respondent, it is not the question of belief or disbelief on the part of the complainant that is material, but only the intention behind the representations which led to the marriage and if the complaint is viewed from the said perspective, it can be seen that there was a strong prima facie case made out in the complaint for proceeding against the revision petitioner for offence under S. 496 of the IPC and what is to be looked into at this stage is only the averments contained in the complaint and the version spoken to by the first respondent in chief examination made before the trial court.

5. The principles governing the quashing of charge are well settled. The Court, at the stage of framing charge is not required to appreciate the evidence and arrive at a conclusion that the materials produced are sufficient for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding

further, then a charge has to be framed. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. It is only for the purpose of deciding prima facie whether the court should proceed with the trial or not that the relevant pleadings should be considered. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. The gist of circumstances of indicate as to what can lead to a conclusion for framing charge cannot be laid down. Everything will have to depend upon the facts and circumstances of the case and the averments made.

6. Bearing in mind the principles aforementioned, the facts of the case may be analysed. The charge framed by the trial court relates to S. 496 of the IPC which provides as follows:

'S. 496: Marriage ceremony fraudulently gone through without lawful marriage - Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'

To sustain a charge under the Section the performance of the ceremony relating to marriage, which is the essential fact to be proved has to be preceded by the further qualification, viz., that it should be performed with dishonest or fraudulent intention. These words have special meaning. Under S. 24 of the IPC, whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'. Under S. 23 of the IPC, 'wrongful gain' is gain by unlawful means of property to which the person gaining is not legally entitled. 'wrongful loss' is the loss by unlawful means of

property to which the person losing it is legally entitled. A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

7. The term 'fraud' has not been defined in the Penal Code. The Concise Oxford Dictionary defines 'fraud' as criminal deception, use of false representation to gain unjust advantage, dishonest articles or trick. It implies a person or thing not fulfilling what is claimed or expected of it. In view of the said position, in order to maintain a charge under S. 496 of the IPC, it is essential that the complainant has to allege that the ceremony of marriage was performed with the intent to make wrongful gain to the accused or to cause wrongful loss to the complainant or based on fraudulent or deceptive representations. As a necessary corollary the question arises as to whether a charge under the section can be maintained where the complainant herself knew fully well that through the ceremony she was not getting lawfully married or where both parties had the same intention in going through the ceremonies which fell for less than making a lawful material bond.

8. A perusal of S. 496 of the IPC in the light of the definition aforementioned clearly leads to the conclusion that for maintaining the charge under the Section the complainant has to establish that the accused went through a ceremony of marriage, that when he went through that ceremony the accused knew that notwithstanding those ceremonies he was not thereby lawfully getting married to the complainant and that he went through the ceremony dishonestly or with fraudulent intention of making the complainant believe that through the ceremony she was legally married to the accused.

9. I have perused the complaint filed by the present first respondent. It is admitted therein that at the time when the alleged ceremony was gone through on 17.9.1975 the complainant was a Lady Professor in the S.N. College for Women, Kollam and that she had been married to her colleague in the College one P.R.R. Babu as early as from 1st November 1964. There is no averment in the complaint that consequent on the performance of the marriage on 17.9.1975 the petitioner

got delivery of any property or made any pecuniary advantage. The averments go only to show that based on the alleged marriage the petitioner and the first respondent started marital life which went on for about 8 years. It is also stated that it was believing the assurance of the petitioner that the complainant would get safety, security and bright future that she agreed to be a party to the marriage. The alleged marriage was performed with the participation of only one person-Sadanandan, who is a relative of the petitioner. The deceitful and fraudulent intention divulged in page 13 of the complaint is that the representations were aimed at 'enticing the complainant from her husband by making her believe that she was the real wife' and that she would not have agreed for the marriage unless she believed the accused's representations. It is also pertinent that though cause of action based on the marriage is said to have taken place on 17.9.1975, even the earlier complaint was filed before Court only on 5.7.1989 nearly 14 years thereafter. I have perused the sworn statement given by the first respondent before the Court. It is clear therefrom that at the time when the alleged marriage was gone through, the first respondent knew fully well that the accused was a marriage person and that the marital relationship had not been terminated through any valid divorce. I am aware that the first respondent had a case that she believed the representation that the wife of the petitioner was mentally diseased and that in such circumstances a second marriage would be permissible. But then what about the complainant who was validly married and mother of triplets? Did she believe that her legal marriage with P.R.R. Babu also came to an end simply because she had an affair with the accused? Going by the educational and official background of the first respondent the contention that she was duped into a second marriage, cannot be prima facie believed. What is evident from the complaint and the sworn statement is that the complainant was very well aware of the marital status of both parties and also that a legal marriage between them would not be permissible or possible as on 17.9.1975. All relevant aspects were within the knowledge of the first respondent and still she was a willing party to the marriage. No dishonest intention or fraudulent representation is thus evident with regard to the decision of the parties for performing the marriage on 17.9.1975.

10. A similar question arose for consideration in *Kailash Singh Parihar & Ors. v. Priti Parihar* (1982 Cr.L.J. 1005). The Court found that where the correctness of

the facts represented were already within the knowledge of the person to whom it is made when such statements cannot be taken as dishonest or fraudulent representation. Further, in the present case it is also not brought out that the petitioner got any wrongful gain by performing the said marriage because no gain or loss of property is involved. A fraudulent representation must be one which a person like the first respondent should be able to believe. When the fact that both parties were married; that there was no divorce actually effected and that a second marriage is hence impossible was very much within the knowledge of the first respondent, it cannot be said that she was defrauded through any representation made by the revision petitioner either. Viewed from this perspective I am of the view that the further proceedings in the case would amount only to wastage of time for all concerned and that the complainant has not made out a proper case justifying the trial of the revision petitioner for the offence under S. 496 of the IPC. In the circumstances and bearing the mind the legal principles already mentioned supra, I am of the view that this is a fit case where the impugned order can be set aside and the complaint dismissed. Ordered accordingly.

11. The Crl.R.P. is disposed of as above.