

(K. Syed) Muhammad Levvai

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Court : Chennai

Decided On : Mar-05-1930

Reported in : AIR1931Mad247

Appellant : (K. Syed) Muhammad Levvai

Judgement :

ORDER

Pandalai, J.

1. This is a petition to revise the order of the learned Sessions Judge of Ramnad refusing to interfere with an order of discharge under Section 203, Criminal P.C., passed by the Sub-divisional Magistrate of Ramnad. The complainant styles himself as the hereditary Katheef Levvai for the Ramnad big Mahalla Muslim Jamath and of the Sankarankobtai Muslims. He preferred a complaint against five persons. Accused 1 was the bridegroom at a marriage. Accused 2 was the bride. Accused 3 was the father of the bride. Accused 4 is described as a teacher in Thinaikulam village, where the marriage took place, and accused 5 is the elder brother of the bridegroom. The charge in substance was that on 8th December 1929 accused 4, teacher, being only a layman, purporting to act as the Levvai, celebrated in Thinaikulam mosque a marriage between accused 1 and 2; that accused 1, bridegroom, being the grand-uncle in the maternal line of the bride, marriage between them is prohibited according to Mahomadan law and therefore void, and that an entry of the marriage was made by accused 4 in the Marriage

Register of Thinaikulam mosque without the knowledge and consent of the Levvai of that mosque. On these facts the complainant charged accused 1 and 2 under 496, I. P.C., accused 3 and 5 with the same offence by reason of abetment and presence under Section 114, and accused 4 under Section 197 with making a false certificate. The Sub-divisional Magistrate took the sworn deposition of the complainant in which he said that the bride belonged to Sankarankottai, that he was filing the complaint because it was his duty as Levvai to prevent such a marriage among Mahomedans in his spiritual jurisdiction, and that he had also been deprived of his fees by the marriage being celebrated in another village. He admitted that there was no law by which a girl should not be married in another village, but it was not the custom to do so. The Sub-divisional Magistrate held that the complainant was the Levvai of Sankarankottai, that he was not related either to accused 1 or 2, who are said to have undergone the marriage ceremony at Thinaikulam; that he was therefore not a person aggrieved within the meaning of Section 198, Criminal P.C. and that the complainant, simply because he was a priest who might have earned some fees if the marriage had taken place in his jurisdiction, could not be considered to have sufficient interest to make him an aggrieved person. He thereupon dismissed the complaint under Section 496, but issued process against accused 4 alone for the alleged offence under Section 197, I. P.C. The case being now pending under Section 197, I. P.C., I do not wish to say anything about that matter except to remark that the question whether there is in the case any certificate which could by law be received in evidence of the fact certified, would require consideration. Coming to the present point, the learned Sessions Judge upheld the view of the Subdivisional Magistrate that the complainant had no grievance to support a complaint or, in other words, that he was not a person aggrieved within the meaning of Section 198, Criminal P.C. Mr. Bhashyam Ayyangar, on behalf of the petitioner, has drawn my attention to the decision in *Daem Sardar v. Batu Dhali* [1906] 3 C.L.J. 38, and to the one in *Chhotalal v. Nathalai* [1901] 25 Bom. 151. In the first case a young lady, whose husband was a lunatic and who was living with her father-in-law, was defamed. It was held that, in those circumstances, the father-in-law was a person aggrieved so as to enable him to file a complaint of defamation. In the second case the husband of a lady who was defamed was held a person aggrieved. Further than that Mr.

Bhashyam Iyengar has not been able to take me. He urges that in the words of the section, ' some person aggrieved, ' his client might be included. I cannot agree. Assuming that the complainant was the priest of either of the parties, which it is not a matter now for decision, his interest in the marriages among his flock is certainly not sufficient to enable him to complain of offences under Sections 493 to 496. Section 493 relates to the offence of sexual intercourse by a person who deceitfully induces a woman to believe that he is her husband: Section 494 is bigamy : Section 495 is bigamy of an aggravated character and Section 496 is going through the ceremony of marriage with a fraudulent intention. The interest of a Levvai, however much the spiritual interest of his community may be entrusted to him, as the complainant says, it is not in the matter of marriages among his people such as would entitle him to come forward and say that he is aggrieved. As to loss of fees, in my opinion, that is also insufficient and too remote to make him aggrieved; and in this case the complainant could not have lost any fees as ex hypothesi the marriage was void and he himself had refused to perform it. On that point I consider that the Courts below were correct.

2. But Mr. Bhashyam Ayyangar has another point, namely that, although a complaint by an aggrieved person may be necessary under Section 198, Criminal P.C., for the principal offence under Section 496, I. P.C., yet no such complaint is needed as against those whom he has charged with abetment. I cannot agree with this. In this particular case the charge is that accused 3 and 5 abetted and were present, thereby bringing themselves under Section 114, I. P.C., being deemed to have committed such act or offence. This section has been explained by the Privy Council as being evidentiary and not punitive because it establishes a presumption, which is irrebuttable that actual presence plus prior abetment can mean nothing else but participation. This was what accused 3 and 5 were charged with in the complaint. They were not charged with abetment alone. In this view it was as much necessary for a complaint to be made as against accused 3 and 5 under Section 198 as against accused 1 and 2.

3. There is one matter which, though not referred to by the lower Courts, I think I must refer to. On the facts it seems to have been assumed that the complaint discloses an offence under Section 496. All that was alleged was that the

complainant objected to the marriage on account of its being within prohibited degrees, and that the parties still persisting in their desire to be united in marriage had gone away from Sankarankottai, the bride's village, where the complainant is the Levvai, to Thinaikulam, where the bridegroom's brother was resident and there got themselves married with the assistance of accused 4 Assuming all that to be true, at present I fail to see how the parties being Mahomedans, among whom marriage is a purely civil contract, an offence under Section 496 is constituted. But it is unnecessary to go further into that matter. The petition must be dismissed.

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