

Murugesar and 15 Others Vs. Ramalakshmi

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Court : Chennai

Decided On : Jun-19-2000

Reported in : 2000(4)CTC468; I(2001)DMC196

Judge : B. Akbar Basha Khadiri, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) -- Sections 482; [Indian Penal Code \(IPC\), 1860](#) -- Sections 107 and 494

Appeal No. : Crl. O.P. No. 4222 of 1999 and Crl. M.P. No. 2054 of 1999

Appellant : Murugesar and 15 Others

Respondent : Ramalakshmi

Advocate for Def. : Mr. A.D. Jagadish Chandran, Adv.

Advocate for Pet/Ap. : Mrs. Vijayalakshmi Natrajan, Adv.

Judgement :

ORDER

1.The accused before the trial Court have come forward with the instant petition to quash the proceedings in C.C.No.5 of 1999 on the file of the Judicial Magistrate, Sankarankovil.

2. The facts which had led to the institution of the instant proceedings briefly can be stated as follows:-

The first petitioner Murugesan had a brother by name Paramasivam. The complainant before the trial Court Ramalakshmi was the wife of Paramasivam. In the lawful wedlock between Paramasivam and Ramalakshmi, a child was also born to them. Later, on 12.2.1994, Paramasivam died, leaving behind his young widow and the infant. Ramalakshmi wanted to marry the first petitioner Murugesan. But, he was not willing for such course. According to the first petitioner, he was forcibly taken to a place known as Sankarankovil on 27.3.1995 and was forced to sign in some papers and also to exchange garlands with Ramalakshmi in a temple. He was kept inside a room which was locked from outside. Ten days after such confinement, he managed to escape on 5.4.1995 and he had also preferred a complaint to Rajapalayam Police in this regard. The first Petitioners filed H.M.O.P.No.36 of 1995 on the file of the Sub-Court, Srivilliputhur to declare the forced marriage of the first petitioner with Ramalakshmi as null and void. Ramalakshmi also filed H.M.O.P.No.1 of 1997 for restitution of conjugal rights. In H.M.O.P.No.36 of 1995, an ex parte order was passed declaring the marriage as null and void. But, that ex parte order was set aside and both the H.M.O.Ps. are now pending enquiry on the file of the Sub Court, Srivilliputhur. Whileso, Ramalakshmi has preferred a complaint before the Judicial Magistrate, Sankarankovil alleging that while the marriage with her is in subsistence. Murugesan has taken a second wife on 7.12.1998. She had preferred the complaint against Murugesan, his wife Selvi and his other relatives. The learned Judicial Magistrate took the complaint on file under Section 494, I.P.C. Now, the accused have come forward with the instant petition to quash the proceedings alleging that the complaint does not disclose necessary ingredients to be established under Section 494, I.P.C.

3. Heard both the sides. I have very carefully gone through the complaint preferred by the petitioner. It is not in dispute that the complainant and the petitioner have approached the Sub Court, Srivilliputhur seeking certain matrimonial reliefs. The complainant has sought for restitution of conjugal rights in H.M.O.P.No.1 of 1997. The first petitioner has sought for a declaration that the marriage purported to have taken place between the complainant and the first petitioner herein was a forced marriage and therefore, it should be declared as null and void. It is admitted by both the parties that both the H.M.O.Ps. are pending on the file of the Sub Court,

Srivilliputhur.

4. The only question is whether the petitioner has made out a ground to quash the proceedings. The learned Counsel for the respondent cited an authority reported in *Dhanalakshmi v. R. P. Rasanna Kumar*, : 1990 CriLJ320 . In that case, their Lordships of the Supreme Court have held as under: -

'Section 482 empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence is frivolous, vexatious or oppressive, if the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent, powers under S. 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide frivolous or vexatious, in that event there would be no justification for interference-by the High Court.'

5. I have very carefully gone through the complaint. The complaint consists allegations that the marriage between the first petitioner and the second petitioner took place on 7.12.1998. The complainant had also alleged that there was a marriage between the complainant and the first petitioner herein on 27.3.1995. which the first petitioner terms as forced marriage. Regarding the validity or otherwise of the marriage, proceedings are pending before the competent civil court. At this stage, we need not go into the question whether or not there had been a marriage between the first petitioner herein and the complainant. But suffice it mention that the complaint discloses all the ingredients necessary for constituting an offence under Section 494, IPC. It therefore cannot be said that at this stage, the proceedings can be quashed so far as the first and second petitioners herein are concerned.

6. The learned Counsel for the petitioners further submits that the complaint would only disclose that petitioners 3 to 9 were receiving the person who attended the marriage which took place on 7.12.1998, petitioners 10 and 11 were offering flowers and sandals to the invites, petitioners 12 to 16 were offering the betel leaves and nuts and petitioners 3 and 4 were showing the thali to the invitees, for the invitees to touch and bless and that the fifth petitioner gave the thali to the first petitioner who tied the same all around the neck of the second petitioner and such act of petitioners 3 to 16 would indicate their participation in the offence.

7. The learned Counsel cited an authority reported in *Nammalwar and others v. Govindaraju*, 1991 L.W. (Cri.) 49 where His Lordship T.S.Arunachalam, J. as he then was, has held as under:-

'11. Turning to the facts in these petitions, the respondent has stated that while proceeding in a bus on 17.3.1985 from Virudhunagar to Nadayaneri, he saw accused 1 and 2 seated together in very close proximity and conversing between themselves, the shocked respondent followed them and found both of them entering into the house of the first accused. The enquiries made by him later at Nadayaneri revealed that the first accused had married the second accused, at Sankarapperi Village, actively abetted by the other accused, though his (AD) marriage with the respondent's sister was in subsistence. Enquiry by the respondent at Sankarapperi where the bigamous marriage was alleged to have been performed, confirmed the information he had obtained at Nadayaneri. Therefore, on these allegations, if the trial Magistrate was satisfied that issue of process was necessary, since there was sufficient ground to proceed, in the light of the law laid down in *Dhanalakshmi's case*, : 1990 CriLJ320 this Court will not be justified in exercising its powers under S. 482, CrI.P.C. to quash the pending proceedings. However, learned counsel appearing for the petitioners as well as learned counsel for the respondent agree that as far as the sixth accused (third petitioner in CrI.M.P.No.8403 of 1985) is concerned there is no prima facie allegation to bring her within the mischief of S. 107, I.P.C. All that has been stated in the complaint is that she distributed sandal-paste, kunkumam and flower to the invitees. This act of the sixth accused, not being a vital part in a bigamous marriage, and even if taken at its face value, will not indicate intentional aid and

active participation in the bigamous marriage, the proceedings in C.C.No.895 of 1985) pending as against her, are liable to be quashed. In respect of the other petitioners, the prosecution cannot be halted in its track and will have to be allowed to survive to reach its logical termination. Sufficiency of evidence will have to be canvassed before the trial court.'

The question whether or not the acts of petitioners 3 to 16 would bring them within the mischief of Section 494, IPC has to be considered, depends upon the question whether their partition was intentional. In the case reported cited supra, there is nothing to show that at the time when marriage took place, it was brought to the knowledge of the gatherings that the accused was already married. It is possible that without knowing the fact that the accused has been already married, they may have participated.

8. In the instant case, the complainant has alleged that she was present at the time of marriage that took place on 7.12.1998 and even tried to obstruct the performance of such marriage. This has to be gone into in the main proceedings to hold whether or not petitioners 3 to 16 took part in the marriage with the knowledge that the first petitioner was already married. At this stage, that cannot be gone into. I do not find any reason to quash the proceedings. This petition is therefore dismissed. Consequently, Crl.M.P.No.2054 of 1999 is also dismissed.

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