

M. Murugan Vs. Ranjini Murugan

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Court : Chennai

Decided On : Jan-10-1990

Reported in : I(1991)DMC233

Judge : Arunachalam, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 203; [Indian Penal Code \(IPC\), 1860](#) - Sections 494; [Hindu Marriage Act, 1955](#) - Sections 17

Appeal No. : Cr. R.P. No. 175 of 1985

Appellant : M. Murugan

Respondent : Ranjini Murugan

Advocate for Def. : N. Natarajan, Adv. for G. Jawaharlal and V. Krishnamoorthy

Advocate for Pet/Ap. : K.A. Panchapagesan, Adv.

Disposition : Petition allowed

Judgement :

Arunachalam, J.

1. The petitioner is the first accused in C.C. No. 2175 of 1980 on the file of XI Metropolitan Magistrate, Saidapet. The prosecution has been initiated against him and two others, on a private complaint preferred by the respondents for offences

under Section 120B read with Section 494, Indian Penal Code, and Section 17 of the Hindu Marriage Act. The respondent is the wife of the petitioner. The second accused in the case, Vimala, was the erstwhile wife of the third accused, C.G. Rangabashyam.

2. On 19-4-1979, the respondent filed a complaint against these three accused and one another for offence under Section 120B read with Section 494, Indian Penal Code, and Section 17 of the Hindu Marriage Act. The complaint was taken on file as C.C. No. 1417 of 1979, on the file of the same Magistrate. The allegation in the complaint was, that the petitioner had married the second accused (Vimala) on 26-3-1978 at Tirumalai, during the subsistence of his marriage with the respondent. The third accused C.G. Rangabashyam, filed a petition under Section 482, Crl. P.C. in this court, numbered as Crl. M.P. No. 2233 of 1979, to quash the proceedings therein. By an order dated 25-2-1980 (See C.G. Rangabashyam v. Mrs. Ranjini Murugan, 1980 LW (CrL.) 174 this court quashed the proceedings against the third accused in C.C. No. 1417 of 1979. Subsequently, the petitioner and the second accused (Vimala) filed a petition for discharge before the trial Magistrate. The trial Magistrate accepted the plea made by the accused and directed their discharge by an order dated 20-6-1980. The respondent did not choose to take up the matter further in the higher forum and, therefore, the first complaint filed by her against accused 1 to 3 and another got terminated on 20-6-1980. Though details are not available, it is conceded by both the counsels that the fourth accused in C.C. No. 1417 of 1979 was also discharged;

3. On 22-3-1980, the respondent filed the present complaint against the petitioner, Vimala and C.G. Rangabashyam, who were accused 1 to 3 in the prior prosecution as well. The allegation in this complaint is that the petitioner married the second accused, Vimala on 13-11-1978 at Tirumalai. The respondent did not choose to implicate the fourth accused in C.C. No. 1417 of 1979, in this prosecution. The averments in the complaint disclose that on 19-8-1978, the marriage between accused 2 and 3, had been annulled by the court.

4. The third accused in C.C. No. 2175 of 1980 filed Crl. M.P. 2310 of 1980 on the file of this court to quash the proceedings as against him in C.C. No. 2175 of 1980.

By an Order dated 23-3-1984 (See C.G. Rangabhasyam v. Mrs. Ranjani Murugan, 1984 LW (Crl.) 276 Maheswaran, J., acceding to the prayer made by the petitioner therein, quashed the proceedings in C.C. No. 2175 of 1980, as far as he was concerned. In the course of his discussion, the learned judge observed that there was no reason why reference to the fact of marriage between the petitioner and the second accused at Tirumalai, had not been made by the respondent in the first complaint, though admittedly she was aware of the said fact. The learned Judge referred to the decision of the Supreme Court in Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, : AIR 1962 SC876 and pointed out that an order of dismissal under Section 203, Crl. P.C. was no bar to entertainment of the Second complaint on the same facts but it could be entertained only in the exceptional circumstances, namely, where the previous order was passed on an incomplete record or on misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish, or where the new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings. Thereafter, the learned Judge restricted the consideration, to the merits of the case as against the third accused, and disposed of the petition, as stated earlier.

5. Thereafter, the petitioner filed a petition under Section 245(2) Cr!. P.C. before the trial Magistrate, to discharge him in the interest of Justice. After narrating the facts in the said petition an averment was made, that the alleged marriage between the petitioner and the second accused at Tirumalai on 13-11-1978, was within the knowledge of the complainant (respondent) even while she preferred her complaint in C.C. No. 1417 of 1979 on 19-4-1979. The records in which she had admitted such knowledge, also formed part of the said petition. It is not disputed before me by learned counsel appearing for the respondent, that the respondent was aware even when she filed the complaint on 19-4-1979, not only about the alleged bigamous marriage on 13-11-1978, but also about the divorce obtained by accused 2 and 3 on 19-8-1978. The trial Magistrate held that under extraordinary circumstances, a second complaint could be entertained and since the respondent was prepared to adduce evidence on the allegations made by her in the complaint, discharge was not feasible and in that view, dismissed the petition, it is against the dismissal of the petition for discharge, by the learned trial Magistrate, that the revision has been filed.

6. Mr. K.A. Panchapagesan, learned counsel appearing for the petitioner, contended that there was no ostensible reason for the respondent not to have stated the fact about the alleged marriage between the petitioner and the second accused at Tirumalai on 13-11-1978, in the first complaint, when such a fact was admittedly within her knowledge. Replying on the observations of the Supreme Court in *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar* : AIR 1962 SC876 , he contended that the tests laid down by the Supreme Court as exceptional circumstances to entertain a second complaint have not been satisfied in this case and, therefore, the trial Magistrate must have discharged the petitioner. Further, he would contend that the present complaint had been filed only after the proceedings were quashed on the previous complaint by this Court, which established that the sole aim of the respondent was to harass petitioner and the other accused. He also pointed out that Maheswaran, J., while disposing of Crl. M.P. No. 2310 of 1980 filed by the third accused, had considered the feasibility of a second complaint on the same facts. Finally, he contended that if the petitioner had already married Vimala (second accused) on 26-3-1978, there cannot be a further marriage between the same parties on 13-11-1978 and the alleged later marriage cannot be termed as 'marriage' for the purpose of Section 494, I.P.C. It is his contention that the initiation and continuance of the present proceedings were not only against law, but clearly amounted to abuse of process of Court. Per contra, Mr. G. Jawaharlal initially and later Mr. N. Natarajan contended, that the second complaint had not been filed on the same facts. The facts are different, in that the bigamous marriage alleged in C.C. No. 2175 of 1980, had taken place on 13-11-1978 at Tirumalai and had nothing to do with the bigamous marriage alleged between the parties at Tirumalai on 26-3-1978. It was submitted, that though the petitioner, who admittedly knew the marriage at Tirumalai between accused 1 and 2 on 13-11-1978 and the divorce between accused 2 and 3 on 19-8-1978, could have stated those salient facts in her earlier complaint dated 19-4-1979, the non-stating of those facts would not forbid her from prosecuting the petitioner and others in C.C. No. 2175 of 1980. While commenting about the decision cited by learned counsel for the petitioner reported in *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar* (supra) learned counsel for the respondent submitted that the apex Court had dealt with a second complaint on the same facts, while this prosecution

related to a different marriage on an altogether different date.

7. I have carefully considered the rival contentions put forward by counsel on either side. While appreciating the respective contentions in the light of the law laid down by the Supreme Court in *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar* it cannot be overlooked that the complainant must approach the Court with clean hands and should not have suppressed material facts admittedly in her possession when she had filed the earlier complaint. If in fact the respondent had stated in the earlier complaint not only about the subsequent marriage at Tirumalai between the petitioner and the second accused but also the divorce between accused 2 and 3 on 19-8-1978, while alleging about the bigamous on 26-3-1978 at Tirumalai between the petitioner and the second accused, the Court could have easily come to the conclusion that the petitioner and the second accused, having been aware that the marriage between them on 26-3-1978 could not be valid in view of the subsistence of the marriage between accused 2 and 3, had chosen to have another marriage performed at Tirumalai on 15-11-1978, after the divorce between accused 2 and 3 on 19-8-1978. This court as well as the trial court could have appreciated the entire fabric of the prosecution case and allowed the respondent to substantiate her case. Her not having chosen to do so certainly amounts to wilful suppression of material facts and if that be so, the harassment alleged and the proceedings being an abuse of process of Court cannot be easily erased or eschewed as not having any substance. It is in this background, the observations of the Supreme Court in *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar* (supra) will become relevant. The apex court has held that an order of dismissal under Section 203, Cr.P.C. is no bar to the entertainment of a second complaint on the same facts, but it would be entertained only in exceptional circumstances narrated by it. Those circumstances are : (1) manifest error; (2) manifest miscarriage of justice; and (3) New facts which the complainant had no knowledge or could not with reasonable diligence, be brought on record in the previous proceedings. Any exceptional circumstance coming within any one or more of the aforesaid three categories would also fulfil the tests. These tests include the circumstance of the previous order having been passed on an incomplete record or on misunderstanding of the nature of the complaint. Though the case related to dismissal of the complaint under Section 203, Cr.P.C. and the entertainment of a

second complaint on the same facts and this case pertains to another bigamous marriage said to have taken place 8 months after the bigamous marriage alleged in the earlier complaint between the petitioner and the second accused, on the facts detailed by me earlier, it is apparent that the respondent, who had possession of all these materials, admittedly, when the first prosecution was initiated, was only attempting to play hide and seek. The present prosecution is only an attempt to aim another arrow, after the previous one got knocked out. The exceptional circumstances pointed out by the Supreme Court, on principle, should be taken to apply to the special circumstances available in this prosecution. Though the dates and venue regarding the alleged bigamous marriage in the earlier and later complaints vary, THE SAME FACT, is the bigamous marriage between the petitioner and accused 2. The incomplete record, in the prior prosecution, viz., the non-placing of the details put forth in this prosecution was solely either due to design or wilful negligence on the part of the respondent. Facts known, cannot be placed before court in instalments depending upon the success or otherwise of the prior litigation. This sort of placement of facts, at the will of the respondent, on WAIT and WATCH basis, cannot certainly be aimed at furtherance of the cause of justice. I am satisfied that the initiation and the continuance of the present proceedings, certainly amount to an abuse of process of Court, especially when the respondent had not come with clean hands and had wilfully suppressed material facts within her knowledge, when she prosecuted the same set of accused earlier. This revision is allowed and the proceedings in C.C. No. 2175 of 1980 on the file of the XI Metropolitan Magistrate, Saidapet, against the petitioner, are quashed. Though the second accused had not chosen to file a petition to terminate the proceedings against her, interests of justice demand that the proceedings against her (Second accused) should also be quashed by the exercise of the revisional power, and it is accordingly so ordered. Thus, the proceedings now pending in C.C. No. 2175 of 1980, on the file of XI Metropolitan Magistrate, Saidapet, Madras, are quashed in toto.