

Pushpa and ors. Vs. Vellamuthu

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Court : Chennai

Decided On : Jul-17-1990

Reported in : I(1991)DMC259

Judge : Arunachalam, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 198(1), 198(2) and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 109 and 494

Appeal No. : Criminal M.P. No. 5981 of 1986

Appellant : Pushpa and ors.

Respondent : Vellamuthu

Advocate for Def. : R. Muthukrishnan, Joshuna Chelliah and S. Thankamani

Advocate for Pet/Ap. : K.N. Basha and K. Jagannathan

Disposition : Petition allowed

Judgement :

Arunachalam, J.

1. The petitioners are the accused in C.C. No. 209 of 1986 on the file of the Sub Divisional Judicial Magistrate, Ulundurpet. The prosecution against them for the alleged commission of offences under Section 494 simpliciter and read with 109

IPC was initiated on a private complaint preferred by the respondent before the trial Magistrate. The respondent's son Kaliyamurthy had married the first petitioner on 6-6-1985 according to his caste customs. While so, the prosecution cast is that the first petitioner married the second petitioner on 12-2-1986 between 6.00 a.m. and 7.30 a.m. at Agasteeswarar Temple, Vetavalam, while her marriage with Kaliyamoorthy was in subsistence. The other petitioners are stated to have abated the bigamous marriage.

2. The prosecution was not initiated by Kaliyamurthy, the first husband of the first petitioner but instituted by his father, the respondent herein.

3. Mr. K.N. Basha, learned counsel appearing on behalf of the petitioners, contended that the respondent will not be a person aggrieved by the offence and the leave of the Court contemplated under Section 198 Cr.P.C. for other persons to file a complaint on behalf of the aggrieved person, will not take into its fold the respondent, on the ground alleged in the petition, praying for leave from the Magistrate. I have heard learned counsel appearing for the respondent on this specific ground.

4. Discussion of facts have no relevance in deciding the pure question of law involved in this petition. There is no dispute that the complaint has been filed only for offences punishable under Sections 494 and 494 read with 109 IPC. Leave had been prayed under Section 198(2) Cr.P.C. by the respondent on two grounds :

(1) Prior to the commission of the offence the first petitioner was under his care;

(2) His son Kaliyamurthy was away at Bombay due to his employment in that place.

An affidavit was filed along with this petition for leave by Kaliyamurthy affirming that he was residing at Bombay in view of his employment and that his wife, the first petitioner had married again when his marriage with her was in subsistence, while she was in the custody of his father Vellamuthu.

5. To appreciate the contention raised by learned counsel for the petitioner Section 198(1) to (3) Cr.P.C. needs extraction :

Section 198 : Prosecution for offences against marriage. (I) No Court shall take cognizance of an offence punishable under XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence :

Provided that--

(a) Where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from a sickness or infirmity unable to make a complaint, or is a woman who according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) Where such a person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of Sub-section (4) may make a complaint on his behalf;

(c) Where the person aggrieved by an offence punishable under Section 494 or Section 495 of the Indian Penal Code is the wife, complaint may be made on her behalf by her father, mother, brother, or sister, or with the leave of the Court, by any other person related to her by blood, marriage or adoption, son or daughter or by her father's or mother's brother or sister,

(2) For the purpose of Sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under Section 497 or Section 498 of the said Code;

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

(3) When in any case falling under Clause (a) of the proviso to Sub-section (1), the complaint is sought to be made on behalf of a person under the age of eighteen years or of a lunatic by a person who has not been appointed or declared by a competent authority to be the guardian of the person of the minor or lunatic, and

the Court is satisfied that there is a guardian so appointed or declared, the Court shall before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard.'

Section 198 Cr.P.C. apparently prohibits cognizance being taken by the Court of an offence punishable under Chapter XX of Indian Penal Code, which includes Section 494, IPC, except on a complaint made by some person aggrieved by the offence. Proviso to Section 198(1) Criminal Procedure Code contemplates certain contingencies in which some other person with the leave of the Court can make a complaint on behalf of the person aggrieved. This includes :

- (a) Where such a person is under the age of 18 years;
- (b) Is an idiot or a lunatic;
- (c) Is from a sickness or infirmity unable to make a complaint;
- (d) Is a woman, who according to the local customs and manners, ought not to be compelled to appear in public.

6. If any one of those conditions extracted above are satisfied some other person till be competent to initiate proceedings, with the leave of the Court on behalf of the person aggrieved by the offence Clauses (b) and (c) of Section 198(1) Cr.P.C. do not attract the facts of this case.

7. Section 198(2) Cr.P.C. on which the respondent had relied upon for seeking leave specifically states, that no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under Sections 497 and 498 of the Indian Penal Code. Section 497 1PC deals with an offence of adultery, while Section 498 1PC concerns itself with the offence of enticing or taking away or detaining with criminal intent a married woman. Therefore, so far as those two offences are concerned, the husband alone is deemed to be the person aggrieved. In other words, for other offences under Chapter XX of the Indian Penal Code Section 198(1) Cr.P.C. is kept open. The proviso to Section 198(2) also assumes significance. The proviso will take in complaint being preferred for the offences under Sections 497 and 498 IPC by some person, in the absence of the husband,

if that person had the care of the woman on behalf of the husband, at the time when such offence was committed. Such person may with the leave of the Court make a complaint on behalf of the husband. This sub-section inclusive of the proviso, does not attract the facts of this case, for we are not concerned with either of the offences punishable under Sections 497 or 498 IPC Section 198(3) of Criminal Procedure Code, though deals with cases falling under Section 198(1)(a), will not apply to the facts unfurled in this prosecution.

8. The respondent would have been justified in praying for leave of the trial Magistrate to make a complaint on behalf of his son, provided the son was from a sickness or infirmity unable to make a complaint. That is not the case of the respondent. The only ground on which leave had been asked for, is that his son was away at Bombay, due to his employment. Such a ground does not attract the proviso to Section 198(1)(a) of the Criminal Procedure Code. On this sole ground, leave granted to the respondent by the Court below does not have the sanction of law. If that be so, the complaint had not been competently taken cognizance of. In that view, there being a legal bar to entertain the complaint, further proceedings in C.C. No. 209 of 1986 on the file of the Sub-Divisional Judicial Magistrate, Ulundurpet cannot be allowed to survive.

9. This petition is allowed, and the proceedings in C.C. No. 209/86, aforesaid shall stand quashed.