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Manjula and ors. Vs. State

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Court : Chennai

Decided On : Jan-03-2012

Judge : P.R.Shivakumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 319, 200, 156(3); Indian Penal Code (IPC) - Sections 494, 109, 498-A, 406; Dowry Prohibition Act - Section 4

Appeal No. : Crl.R.C.(MD) No.535 of 2011 and M.P.(MD)No.2 of 2011

Appellant : Manjula and ors.

Respondent : State

Advocate for Def. : Mrs.S.Prabha, Adv.

Advocate for Pet/Ap. : Mr.R.Gokul, Adv.

Judgement :

This Criminal Revision Case has been filed against the order of the learned Judicial Magistrate No.1, Thanjavur, dated 17.12.2009 made in Cr.M.P.No.9605 of 2006 in C.C.No.174 of 2000.

2.The said petition was filed by the respondent police praying that the learned Judicial Magistrate should exercise the power conferred on the court under section 319 Cr.P.C., on the premise that the materials placed were sufficient to form a

opinion that the first petitioner herein appears to have committed an offence under section 494 IPC and the 2nd and 3rd petitioners herein appear to have committed an offence punishable under section 494 r/w 109 IPC.

3.The learned Judicial Magistrate, after giving an opportunity to the petitioners herein to file their counter, conducted an enquiry and upon such enquiry, came to the conclusion that the evidence already adduced in the case, are enough to make the petitioners herein to face trial for the above said offences. Accordingly, the petition was allowed and process was directed to be issued to the petitioners, arraying them as accused Nos.4 to 6. The said order is challenged by the petitioners in the present Criminal Revision Case.

4.The arguments advanced by Mr.K.Gokul, learned counsel for the petitioners and by Mrs.S.Prabha, the learned Government Advocate (Criminal Side), representing the respondent police were heard.

5.Before admission, records were sent for from the court below and this court does have the benefit of going through the records. Upon hearing the arguments advanced on behalf of both sides and after perusing the records, this court passes the following order.

6.Ravichandran, who has been arrayed as Accused No.1 married the de-facto complainant Jayalakshmi on 3.2.1991 and they were gifted with a male child, which was born on 9.8.1992. Even before the birth of the child, there arose difference of opinion between the husband and the wife and from the month of November 1991, the de-facto complainant Jayalakshmi is living with her parents. Subsequently, in 1999, the de-facto complainant Jayalakshmi, preferred a complaint under section 200 Cr.P.C before the learned Judicial Magistrate No.1, Thanjavur, alleging commission of offences punishable under sections 498-A, 406, 494 r/w. section 109 IPC and also an offence under section 4 of the Dowry Prohibition Act. The said Ravichandran and his parents were arrayed as Accused Nos.1 to 3. The de-facto complainant has made allegations against them, attracting the offences punishable under section 498-A and 406 IPC and section 4 of the Dowry Prohibition Act.

7.Based on further allegation that Ravichandran married Manjula, the first petitioner herein, during the life time of his legally wedded wife, namely the de-facto complainant Jayalakshmi and thus, committed an offence under section 494 IPC and that the other accused persons abetted the commission of said offence and were thus, guilty of the offence punishable under section 494 r/w.109 I.P.C. She had arrayed the petitioners herein also as accused Nos.4 to 6 in the private complaint.

8.The learned Judicial Magistrate No.1, Thanjavur, without taking cognizance of the case, simply referred the complaint to the police under section 156(3) Cr.P.C., pursuant to which, the respondent police registered a case in crime No.33 of 1999. But surprisingly, on completion of the investigation, the investigating officer submitted a final report against Ravichandran and his parents alone (A-1 to A-3) alleging commission of offences under section 498-A IPC and section 4 of the Dowry Prohibition Act. The same was taken on file by the learned Judicial Magistrate No.1, Thanjavur, as C.C.No.174 of 2004. During the course of trial, five witnesses including the de-facto complainant were examined on the side of the prosecution. All the witnesses gave evidence to the effect that during the subsistence of the marriage of the first accused Ravichandran with the de-facto complainant Jayalakshmi, the first accused married Manjula, the first petitioner herein. Based on the evidence, thus adduced by the prosecution witnesses, the respondent police chose to file the petition under section 319 Cr.P.C. for issuing process against the present petitioners against whom no charge had been made in the final report submitted by the investigating officer. In the petition filed before the learned Judicial Magistrate, it was contended on behalf of the prosecution that though the investigating officer was not in a position to include the offence under section 494 r/w 109 IPC in the final report, during the course of trial, evidence came in abundance, which would be sufficient to make the petitioners herein to face the trial for the said offences.

9.On the other hand, in their counter statement filed by the petitioners herein, they have simply stated that the petition filed under section 319 Cr.P.C. was belated, since the same was filed nearly after nine years from the date of alleged second marriage and six years from the date of complaint. It is the further contention made

by the petitioners in their counter filed before the trial court that the private complaint itself was filed only for dowry harassment and not for any other offence and that hence, the evidence tendered during the course of trial was only with an intention to spoil the reputation of the accused persons and attach permanent stigma in their life.

10.The learned Judicial Magistrate, after referring the rival contentions made on both sides, rejected the contention of the revision petitioners that the petition filed under section 319 Cr.P.C was belated. It is trite law that though a person was not arrayed as an accused in the final report or at the initial stage of the prosecution, if the evidence adduced is capable of giving an impression that other persons also have committed any offence, then the court can prosecute them also along with the accused persons, who were already facing trial.

11.In this case, the learned counsel for the revision petitioners, impugning the order of the learned Judicial Magistrate, would submit:-

(i)the purported launching of the prosecution against the revision petitioners for the offence under section 494 r/w section 109 IPC is belated, as the application under section 319 Cr.P.C was made nearly after seven years from the date of alleged second marriage;

(ii)since, the de-facto complainant Jayalakshmi is living away from A-1 Ravichandran, his marriage with any other woman will squarely fall under the exception to section 494 IPC and hence, no prosecution can be validly initiated against A-1 Ravichandran for the offence under section 494 IPC and that the other accused persons (A-1 to A-3) and the present revision petitioners (A-4 to A-6) can not be prosecuted for an offence under section 494 r/w 109 IPC.

12.Both the contentions are liable to be rejected as untenable. It is not the case of the petitioners that the offence for which the petitioners are sought to be prosecuted cannot be taken cognizance of on the ground of the same being barred by limitation. The allegation of afterthought with an intention to malign the petitioners and the first accused also cannot be sustained, for the simple reason that in the complaint itself, elaborate and sufficient allegations were made to the

effect that after deserting the de-facto complainant the first accused Ravichandran, married Manjula, the first petitioner herein and that the attempts made by the de-facto complainant and her parents to prevent A-1 Ravichandran from marrying the first petitioner, Manjula proved futile. The complaint also specifically states that all the other accused persons, including the petitioners herein were to be prosecuted for an offence under section 494 r/w 109 IPC. However, when the investigation was completed by the police, the investigating officer chose to submit a final report alleging the offence under section 498-A IPC and section 4 of Dowry Prohibition Act on the part of the accused Nos.1 to 3 alone and omitted to touch the question of alleged bigamy and the abatement of bigamy. Only under such circumstances, during the course of trial, the de-facto complainant and the other prosecution witnesses gave evidence in support of the averments found in the complaint, which cannot be stated to be an afterthought as contended by the learned counsel for the petitioners. As the first contention of the learned counsel for the petitioner deserves to be rejected as untenable.

13.The next contention raised by the learned counsel for the petitioners is that since the de-facto complainant was not living with her husband Ravichandran (A1) for more than seven years, it shall be presumed that she is no more alive and hence, the marriage, if any, of A-1 with Manjula, the first petitioner herein, cannot be termed as a bigamous marriage, that too a punishable offence under section 494 IPC. Perhaps, the attempt on the part of the learned counsel is to show that the de-facto complainant was not heard of being alive for more than seven years and hence, presumed to be dead and on that basis, any marriage contracted by A-1 Ravichandran with another person could not be brought within the purview of section 494 IPC. However, during the course of the argument, learned counsel for the petitioners submitted that when a husband or wife deserted the other spouse for more than seven years, then automatically the exception to section 494 IPC will get attracted. Such a far-fetched contention cannot be accepted.

14.There are allegations and evidence to the effect that the de-facto complainant gave birth to a male child on 9.08.1992 and in 1998, the attempt made by the first accused to contract a second marriage was sought to be prevented unsuccessfully. There are also allegations, which are again reflected in evidence,

to the effect that the first accused and his parents were adumbrating that they would get the first accused married to another woman, in case of non-compliance with their demand of dowry. There is also allegation to the effect that they wanted to get the signature of the de-facto complainant expressing her consent for a consent divorce and no objection for A-1 contracting 2nd marriage. Such allegations are enough to show that a prima facie case has been made out to make the petitioners herein also to face the trial for the offence under section 494 r/w.109 IPC. For all the reasons stated above this court comes to the conclusion that even factually also, no case for attraction of the exception under the proviso to Section 494 IPC is made out. Hence the second contention also deserves rejection.

15.The above said observations, regarding the non-attraction of the exception provided under section 494 IPC, have been made only to show that there are prima facie materials to make the petitioners to face the trial for the said offence and the same cannot be taken as a final opinion on the merits of the case. The trial court should not be carried away by any of the observations made above, while conducting trial for the offence alleged against the petitioners herein.

16.For all the reasons stated above, this court comes to the conclusion that the revision fails and it deserves to be dismissed.

17.Accordingly, the Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

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