

K.Venugopal Vs. Usha Rani.

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Court : Chennai

Decided On : Mar-21-2012

Judge : P.R.Shivakumar, J.

Acts : Indian Penal Code (IPC) - Sections 494, 109; Code of Criminal Procedure (CPC) - Section 482, 200, 202, 244, 245

Appeal No. : CRL.R.C(MD)No.117 of 2012 and M.P(MD)No.1 of 2012

Appellant : K.Venugopal

Respondent : Usha Rani.

Judgement :

Prayer

Criminal Revision case filed under Section 397 r/w 401 Cr.P.C., praying this Court to call for the records relating to the order, dated 03.02.2012 made in Cr.M.P.No.292 of 2012 in C.C.No.108 of 2005, on the file of the Judicial Magistrate No.II, Virudhunagar and to set aside the same.

ORDER

1. This Criminal Revision Case stands listed today for admission. As there is no representation for the revision petitioner, this Court deems it fit to pass an order after going through the records.

2. The petitioner in the revision case had been arraigned as accused No.2 in a criminal case instituted on a private complaint on the file of the learned Judicial Magistrate No.II, Virudhunagar in C.C.No.108 of 2005. The revision petitioner figures as the second accused in the said calendar case. One Sridhar, figures as accused No.1 and Chandra and Anusha Priya figure as accused Nos.3 and 4 respectively. The accused Nos.2 and 3 Venugopal and Chandra are the parents of Sridhar, who figures as first accused. Contending that she is the legally wedded wife of the first accused Sridhar; that during the subsistence of her marriage with the first accused Sridhar, the first accused contracted a bigamous marriage with the fourth accused Anusha Priya with the help of the parents of the first accused and that thus the first accused Sridhar committed an offence under Section 494 I.P.C., whereas, the other accused persons committed an offence punishable under Section 494 r/w Section 109 I.P.C., the respondent in the revision petition, namely Usha Rani preferred a private complaint on the file of the learned Judicial Magistrate No.II, Virudhunagar. Following the procedure prescribed for taking cognizance of offences on a private complaint and also taking into account the fact that the offence alleged is not a cognizable offence and the same could be taken cognizance only on the complaint of the wife or the other persons, the learned Judicial Magistrate No.II, Virudhunagar decided to take cognizance of the offence and recorded the sworn statements of the complainant as well as the witnesses produced by the complainant. Upon considering the complaint and the sworn statements, the learned Judicial Magistrate decided to try the case as a warrant case and assigned C.C.No.108 of 2005 and issued process.

3. Thereafter, the revision petitioner and other co-accused chose to file a Criminal O.P on the file of this Court under Section 482 Cr.P.C., as CrI.O.P.No.5321 of 2011, for quashing the complaint. No stay was granted in the said petition. On the other hand, the petitioner herein, who figures as the second accused chose to withdraw the said petition filed before this Court so far as the petitioner herein is concerned. Then the revision petitioner filed a CrI.M.P.No.292 of 2012, on the file of the trial Court for discharge. The learned Judicial Magistrate, after hearing, dismissed the said petition holding that the revision petitioner herein/second accused had not made out a case for discharge. Hence, the revision petitioner is before this Court with the present Criminal Revision Case challenging the

impugned order of the learned Judicial Magistrate, dated 03.02.2012 made in Cr.M.P.No.292 of 2012 in C.C.No.108 of 2005.

4. In support of his prayer for discharge, the revision petitioner herein made the following averments before the trial Court:

1) According to the complainant, the marriage of the first accused with the fourth accused took place on 04.06.2003 at Pudukkottai, whereas the complaint came to be filed on 20.04.2005, and hence there was a delay in preferring the complaint.

2) Though the complainant claim that one Seeniraj gave her the information regarding the second marriage of the first accused, the said Seeniraj was not examined before the learned Judicial Magistrate.

3) The Complainant had approached the trial Court with unclean hands.

4) Earlier, the respondent in the revision case/complainant was married to one Sundaramoorthy and the marriage is claimed to have been dissolved by a foreign decree. The said foreign decree is invalid and hence, the marriage of the respondent/complainant with the first accused Sridhar is not a legally valid one. Therefore the respondent herein/ complainant is not competent to complain about the alleged bigamous marriage of Sridhar/first accused with Anusha Priya/fourth accused.

5. The learned Judicial Magistrate, upon consideration of the said grounds, came to the conclusion that none of the grounds was sufficient to seek discharge and dismissed the petition by the impugned order, dated 03.02.2012. Let us now consider whether there is any substance in the contention raised by the revision petitioner.

6. The first contention deserves to be rejected because no complaint can be straightaway rejected on the ground of delay or laches unless cognizance of the offence is barred by the law of limitation.

7. The second ground alleged is that the person, who is said to have passed on the information that the first accused Sridhar contracted a second marriage with

the fourth accused Anusha Priya, was not examined and his sworn statement was not recorded by the trial Court before taking cognizance of the offence. It is not necessary that the statements of all the witnesses proposed to be examined on the side of the complainant should be recorded. On the other hand, as per Section 200 Cr.P.C., it is mandatory to examine the complainant on oath and only the witnesses, if any, who is present. Thereafter, the Court may either issue process or postpone the issuance of process till completion of the process for collection of evidence contemplated under Section 202 Cr.P.C. The learned Magistrate, upon considering the complaint, sworn statements of the complainant and witnesses and also the result of the inquiry or investigation contemplated under Section 202 Cr.P.C., shall have to dismiss the complaint, if no sufficient ground for proceeding against the accused is found. If it is not so, then process shall have to be issued. When process is issued, the Court shall decide whether procedure for warrant cases or summary trial cases is to be applied. Even in respect of summons cases, the Court taking cognizance of the offence and issuing process may decide to follow the procedure applicable to warrant cases. In this case, the court below has decided to follow the procedure applicable to warrant cases.

8. After service of process on the accused, the accused/petitioner herein filed a petition under Section 245 Cr.P.C., praying for an order of discharge. The question of discharging the accused under Section 245 Cr.P.C., will arise only after completion of the evidence on the side of the prosecution. Section 244 Cr.P.C., is to the effect that when, in any warrant case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. It also proceeds to state that the Magistrate on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

9. The Succeeding Section Viz., Section 245 Cr.P.C., is to the effect that if upon taking all the evidence as referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if un-rebutted, would warrant his conviction, the Magistrate shall discharge him.

10. For non-examination of a person as a witness before the issuance of process, no order of discharge can be passed since the complainant does not have the opportunity to examine as a witness in the trial. Even otherwise, this Court is of the considered view that the non-examination of the informer will not in any way make the case of the complainant to be one having no sufficient grounds for proceeding against the accused. The complainant as P.W.1 and one more witness as P.W.2 have deposed in support of the complainant's case. As per the documents included in the typed-set of papers, they have not yet been cross-examined. Therefore, their testimonies still remain un-rebutted. It cannot be said that un-rebutted testimonies of P.Ws. 1 and 2 would not be enough to warrant a conviction. Therefore, the second ground on which discharge has been claimed by the revision petitioner also deserves to be rejected as untenable.

11. The question whether the complainant has approached the trial Court with clean hands or unclean hands is not germane to an enquiry as to whether the accused is entitled to discharge. Even if the complainant would have come to the Court with unclean hands and at the same time, the complainant has made allegations sufficient to make out the offence alleged and proposes to adduce sufficient evidence in proof of the same, the same shall be enough to make the accused face the trial and the accused cannot seek discharge on the ground of mala-fide on the part of the complainant. As such, the third ground also falls to the ground.

12. It is quite ridiculous to contend that a foreign decree dissolving the marriage of the complainant with one Sundaramoorthy is legally invalid and dissolution of a Hindu Marriage between two Hindus solemnized in India by a foreign Court is unknown to law. Based on the said contention, the revision petitioner has made an attempt to show that the respondent/complainant is not the legally wedded wife of the first accused Sridhar and hence she cannot make a complaint against the first accused accusing him of contracting a bigamous marriage with the fourth accused. Whether a foreign Court in which the decree of dissolution was obtained did have the jurisdiction to grant the relief is to be tested in the light of the principles of Private International Law applied by the Courts in India. Simply, because the decree for dissolution of a marriage which was solemnized in India,

has been granted by a foreign Court, no one can contend that such a decree is not valid in law. Matrimonial causes are decided on the basis of domicile of the parties. When selection of jurisdiction shall be on the basis of such domicile, whether petitioning spouse was domiciled in a foreign country at the time of seeking the relief of dissolution of marriage and whether the respondent has also acquired the domicile of that country or not is a matter for trial and the question of recognizance of the foreign decree is also a matter for trial. Therefore, the contention of the revision petitioner that since a decree for dissolution of the marriage between the complainant and her former husband Sundaramoorthy was passed by a foreign Court, the same is not valid in law cannot be accepted as a ground for seeking discharge. For all the above said reasons, the fourth ground raised by the revision petitioner for discharge also deserves to be rejected as untenable.

13. The learned Judicial Magistrate on proper understanding of law and proper appreciation of the plea made by the petitioner came to a correct conclusion that the revision petitioner had not made out a case for discharge and accordingly dismissed the discharge petition. This Court does not find any defect or infirmity in the impugned order, dated 03.02.2012 passed by the learned Judicial Magistrate No.II, Virudhunagar in Cr.M.P.NO.292 of 2012 in C.C.No.108 of 2005. There is no justification, whatsoever, to interfere with the same.

14. In the result, the Criminal Revision Case fails and the same is dismissed. Consequently, connected Miscellaneous Petition is dismissed.

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