

**IN THE COURT OF THE JUDICIAL MAGISTRATE,
SULUR, COMBATORE DISTRICT.**

**Present: Tmt.G.Rubana, B.Sc., M.L.,
Judicial Magistrate, Sulur.**

Friday the 10th day of May 2024

**Cr.M.P. No:146 of 2020
in
C.C. No. 211 of 2019**

B.Asokadevi

... Petitioner / Respondent.

-Vs-

C.Senthilkumar

... Respondent / Complainant.

This petition has been filed on 20.01.2020 and coming for final hearing today in the presence of Mrs.B.Sumathy, M.A., B.L. Advocate for the petitioner and Mr.M.Sivasubramaniam, B.C.S., B.L., Advocate for the respondent and upon perusal of the petition, counter and connected records and hearing both side arguments this court passed the following

ORDER

The present petition has been filed under section 258 of Cr.P.C to stop further proceedings of C.C.No. 211 of 2019.

(1). The gist of the petition filed by the petitioner / respondent is as follows:

(1.1). The petitioner submits that she has been branded as accused in the complaint and the same is a defamatory and condemnable one and without lodging police complaint, the petitioner had filed this complaint and since the proper procedure is not followed, Section 200 Cr.P.C., has no application, at the outset itself, the complaint is liable to be dismissed and after filing petition to declare the marriage as null and void, the complainant came up with this complaint for the offence under sections 494 and 495 of IPC and if two distinct verdicts are pronounced, the same will cause confusion and the petitioner and the respondent are started living as husband and wife and hence, the offence under sections 494 and 495 of IPC have no application and since the marriage between them was consummated, former husband ceased to be her husband.

(1.2). Further, the petitioner submits that the respondent was employed for sweeping and supplying tea in Apollo, while the petitioner qualified M.B.A, held higher post and by deceitful means, the respondent earned sympathy and had ideology that the former marriage was virtually broken and need not worry about the verdict of the court and by which, he had mesmerized her and on 14.01.2017, when group photo was taken in the Pongal celebration at Apollo office premises, the petitioner wore mangal naan and kungumam on her forehead and hence, the respondent does not aware of her previous marriage is false and mischief and they had initially good understanding and she wanted dependency and loyalty and the respondent escorted her to Udumalpet and Tiruppur even before the marriage and he compelled her for marriage at earliest and he had sent horoscope on 04.04.2017 and he had sent message and asked her to pay movie tickets and he had put more pressure on her to get married and compelled her to attend his father's anniversary and while she was changing dress, the respondent had taken her nude photos and blackmailed her to marry him, failing which, he would upload in the website and within three months of their marriage, he had started to harass her and his mother and grand mother tutored him and he left the job and remained in home and the petitioner earned money and ran the family and hence, all her sources and salaries were exhausted.

(1.3). Further, she had procured assets by borrowing everywhere, however, the respondent got the sale deed in his name and hence, the petitioner had filed suit for permanent injunction from damaging the property and status quo was ordered in her favour and both of them are still living in the same house and the former husband of the petitioner and the respondent have colluded with each other and playing in her life and with a view to harass her, the respondent had filed this petition and she has documents, photos and video footage to prove her stand and the allegations of the respondent with respect of marriage expenses is falsehood, he earned megar sum as salary from Appollo Center and it is false to allege that the respondent followed the petitioner on 23.01.2018, she had presented in her office and even assuming for a moment without admitting that the respondent had knowledge of the petitioner's first marriage only on 23.01.2018, what made him to wait till 11.12.2018 for filing complaint and the same leads to suspicion and the complainant's mother is paralyzed is a fictitious story and she is strong and healthy, they are arrogant and the allegations in the petition are false, frivolous, since the respondent had initiated Civil proceedings in HMOP No.185/2018 for declaring the marriage as null and void, this

complaint is not maintainable and prays to stop further proceedings of C.C.No: 2011/2019.

(2).The gist of the counter filed by the respondent /complainant is as follows: -

The respondent/complainant submits that the petition is false, frivolous, vexatious and not maintainable both in law and fact and denied all the averments in the petition and she has to put strict proof of the same and she had filed this petition to drag on the case and not entitled for any relief and this petition is liable to be dismissed in limine and she has not come with clean hands and suppressed many facts and this petition is abuse of process and law and she has no locustandi to file this petition and after taking sworn statement in CMP No.4247/2018, this court had taken cognizance and assigned number in C.C.No: 211/2019 and further submit that he had not cohabited with the petitioner and she had forcibly occupied his house by threatening him and the respondent is maintaining his house and his dependents out of his earnings and he has not colluded with anyone and filed this petition and the petitioner herself has admitted that her marriage with Thangaraj had not yet been dissolved and she had married the respondent during the pendency of divorce case and the same is enough to dismiss this petition and she is liable to be punished for offence under sections 494 and 495 of IPC and prays for dismissal of this petition.

(3). Now the point to be decided is, Whether this petition could be allowed or not?

(3.1). Heard, and perused the records.

(3.2). Brief facts of the complaint filed by the complainant under Section 200 of Cr.P.C., is that the marriage between the complainant and accused solemnized on 01.06.2017 and they lived together as husband and wife and the complainant had noticed that the accused visited Tirupur and Udumalpet every month and hence he had followed her on 23.01.2018 to Udumalpet court and on enquiry, she had revealed her first marriage with Mr.Thangaraju and the mother of the accused informed him that her daughter had already informed him about her 1st marriage and her 1st marriage was solemnized on 07.09.2014 at Udumalpet and later she had lodged various complaint against her 1st husband and her 1st husband had filed divorce petition in H.M.O.P.No: 149/2016 on the file of the Principal Subordinate Judge, Tirupr and she had filed D.V.No:3/2016 and later the divorce petition was transferred to Subordinate Court, Udumalpet, by the Hon'ble High Court and renumbered in H.M.O.P.No: 73 / 2017 and on knowing the above said facts the paralyzed mother and grandmother of the complainant got stressed and then the accused started

harassing them and also threatened them that she will lodge complaint for dowry harassment like complaints lodged against her 1st husband and further accused is pursuing LLB and the mother and sisters of the accused came to the complainant's house on 27.07.2018 with one Mr.Suresh and Mr.Vadivel had threatened the complainant's family that if they reveal the 2nd marriage of the accused to her 1st husband they will kill them and then the accused had separate cooking and restricted the complainant's family to kitchen and bathroom from 09.00a.m., to 06.00p.m., and if they used beyond that time limit she had physically injured them and abused them and since the accused had suppressed her previous marriage and married the complainant in the subsistence of her 1st marriage the complainant had issued legal notice on 14.09.2018 and the same was received by the accused and refused to settle the matter and hence the complainant had filed the private complaint for offence under Section 494 and 495 of IPC.,

(3.3). The learned petitioner counsel had filed her written argument and argued that this complaint itself not maintainable since the complainant had filed this complaint for offence under Section 494 and 495 of IPC r/w Sec 5(I) & 17 of the Hindu Marriage Act 1955 and hence this court had no jurisdiction. On perusal of records it reveals that this court had taken sworn statement and taken cognizance for offence under Section 494 and 495 of IPC and hence the submission of the petitioner counsel is unsustainable.

(3.4). Section 494 of IPC is follows: -

Marrying again during life-time of husband or wife.

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may **extend to seven years**, and shall also be liable to fine.

Sec 495 of IPC is follows: -

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted

Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may **extend to ten years**, and shall also be liable to fine.

Further, Section 258 Cr.P.C., as follows: -

Power to stop proceedings in certain cases

In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case release, the accused, and such release shall have the effect of discharge.

As per Section 2(w), "**summons-case**" means a case relating to an offence, and not being a warrant-case and

as per Section 2 (x), "**warrant-case**" means a case. Relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

(3.5). If imprisonment exceeds two years then those offences ought to have been tried as a warrant case. In the case on hand offence under Section 494 and 495 of IPC are punishable for more than two years and hence they ought to have been tried as warrant case procedure.

(3.6). The procedure for handling summons cases I.e offences punishable for two years and less are outlined in Sections 251 to 259 of the Cr.P.C., and further, more particularly section 258 is applicable only to the summons case and that too instituted otherwise than the complaint. However, in the case on hand offence under Section 494 and 495 of IPC are warrant cases and the complainant had filed private complaint under Section 200 of Cr.P.C., and further Chapter X1X-B of Cr.P.C., deals with the procedure for conducting the cases instituted otherwise than on police report from Section 244 to 247. Hence this court is of the consider view that this petition under Section 258 of Cr.P.C., to stop the further proceedings of the warrant case instituted otherwise than on police report is not maintainable.

(4). In result, this petition is dismissed.

Dictated by me to the Steno typist and typed by her directly in the computer and after effecting necessary corrections pronounced by me in the open Court on this the 10th of May 2024.

**Judicial Magistrate,
Sulur.**

Petitioner side witness: - Nil
Petitioner side list of Documents: - Nil
Respondent side witness: - Nil.
Respondent side documents: - Nil.

**Judicial Magistrate,
Sulur.**