
(2008) 03 MAD CK 0168

In the Madras High Court

Case No : Criminal R.C. (MD) No. 848 of 2007 and M.P. (MD) No. 1 of 2007

N. Poongodi, M.B.B.S., A. Rajeswaran, M.B.B.S. DCh. and
Pooranam

APPELLANT

Vs

V. Irulappan, M.Sc.

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Citation : (2008) 2 LW(Cri) 1101

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : N. Anantha Padmanaban, for the Appellant; R. Gandhi, for the Respondent

Judgement

S. Nagamuthu, J.—The petitioners are accused Nos. 1 to 3 in C.C. No. 28 of 2007 on the file of the learned Judicial Magistrate I, Srivilliputhur. The offences alleged to have been committed by the petitioners are under Sections 494 and 406 I.P.C. The petitioners filed a petition before the learned Judicial Magistrate No. I, Madurai in CrI. M.P. No. 973 of 2007 seeking for discharge. But the learned Judicial Magistrate by order dated 16.10.2007 has dismissed the same. Challenging the said order of dismissal, the petitioners have come forward with this revision.

2. The facts that are necessary for the disposal of this revision are as follows:

Admittedly, the first petitioner married the respondent on 04.06.1998 and the marriage is still subsisting. According to the further allegation in the complaint, on 10.11.2006 the first petitioner married the second petitioner and the third petitioner participated and assisted for the said marriage, knowing fully well that the first petitioner was already married to the respondent. Subsequently, the said marriage was also registered before the Marriage Registrar, Koodalur, Nilgiris District. According to the complaint, the said act of the accused Nos. 1 and 2 amounts to an offence punishable u/s 494 I.P.C and the act of the third accused is punishable u/s 494 r/w Sec 109 I.P.C. In the same complaint, it is further

stated that on 05.05.2005 the respondent entrusted 5 sovereigns of gold chain and a gold ring with precious stone to the first petitioner, but the first petitioner has not returned the same and has committed breach of trust. According to the complaint, the said act of the first accused amounts to an offence punishable u/s 406 I.P.C.

3. Admittedly, the petitioners on an earlier occasion filed Crl.O.P No. 6308 of 2007 before this Court seeking to quash the said private complaint as soon as they received summons. But this Court by order dated 13.07.2007 declined to quash the complaint and disposed of the Criminal Original Petition, with liberty to the petitioners to file appropriate petition before the learned Judicial Magistrate for discharge. It is in pursuance of the said liberty given by this Court, the petitioners have filed Crl. M.P. No. 973 of 2007, which ultimately came to be dismissed.

4. The learned counsel for the petitioners would raise the following points for consideration:

i) The second marriage, which is alleged to have been solemnized between the first petitioner and the second petitioner, was in Pollachi and therefore, the lower Court ought not to have taken cognizance of the complaint for want of jurisdiction;

ii) In the complaint, there are no specific overt acts attributed to the petitioners and in the absence of such statement, attributing specific overt act to the accused, the complaint is not maintainable and therefore, the same is liable to be quashed;

iii) The form of marriage allegedly undergone by the petitioners 1 and 2 has also not been stated and in the absence of such statement, the complaint is liable to be quashed;

iv) The trial Court was not right in entertaining the joint complaint with reference to an offence u/s 406 I.P.C, which, even according to the complaint, had occurred in the year 2005 and the offence u/s 494 I.P.C, which occurred in the year 2006.

5. The learned counsel for the petitioner would also rely on the judgments of this Court reported in 1992 Law Weekly, (Criminal 159 (Perumal Pillai and 2 Others v. Sivakami and Others) and 1998 Law Weekly (Cri) 398 (Prasanna Kumar v. Dhanalakshmi and Others) to substantiate the above said contentions.

6. The learned counsel for the respondent would resist all the above stated arguments of the learned counsel for the petitioners. He would submit that the lower Court has jurisdiction to entertain the complaint since the respondent was residing within the jurisdiction of the lower Court after the commission of the offence. The learned counsel would further submit that there are allegations attributing specific overt acts in the complaint itself. He would further submit that the form of marriage has also been stated in the complaint and even in the

absence of any such specific statement regarding the form of marriage, the complaint can be maintained. The learned counsel would further submit that for any reason if the court holds that entertaining a single complaint in respect of two different occurrences, is irregular, the complaint in so far as the offence u/s 406 I.P.C. may be quashed with liberty to the respondent to prefer a separate private complaint in respect of the said offence.

7. I have considered the rival submissions and also gone through the papers.

8. In so far as the first submission, namely, the question of jurisdiction is concerned, we have to refer to Section 182(2) Cr. P.C, which reads as follows:

Any offence punishable u/s 494 or Section 495 of the Indian Penal Code may be inquired into tried by a Court within local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage or the wife by first marriage has taken up permanent residence after the commission of offence.

A close reading of Section 182(2) Cr. P.C. would show that if the offender along with his/her spouse had lastly resided within the jurisdiction of the learned Magistrate, then the said Magistrate has got jurisdiction to entertain the complaint. A perusal of the complaint would show that in paragraph 1 of the complaint, the complainant has stated that the first petitioner, namely, the wife of the respondent is residing at Mannvayal in Koodalur, Niligiri District. But there are no allegations found in the complaint that either at the time of the commission of the alleged crime u/s 494 I.P.C or sometime before the first petitioner and the respondent lastly resided anywhere within the jurisdiction of the lower Court. Therefore, in my considered opinion, the lower Court has no jurisdiction to try the case. At the same time, I have to say that the jurisdiction to try a case is something different from the jurisdiction to take cognizance.

9. The learned counsel for the petitioners would fairly submit that the Hon"ble Supreme Court in *Manish Ratan and others v. State of M.P. and Another* reported in 2007 SAR (Cri) 1 : 2007 2 L.W. (CrI.) 637, while dealing with an identical question has ordered transfer of the case to the other Court having jurisdiction in that case. The complaint was not allowed to be quashed on the ground of jurisdiction. At this stage, I have to state that it is a well settled principle of law that no party shall be prejudiced due to the act of the Court. The legal maxim "*Actus Curiae neminem grabavit*" should be well remembered. In this case, at the time when the complaint was preferred, if the learned Magistrate had returned the complaint, on the question of jurisdiction, the respondent would not have suffered to this extent. Therefore, in my considered opinion, for any reason, if it is found that there is a case to be tried, the said trial should be ordered to be conducted only by the Court having jurisdiction.

10. The next contention of the learned counsel for the petitioners is that there are no specific overt acts attributed to the petitioners in the complaint itself. In this regard I have to state that u/s 8 of the Hindu Marriage Act, the Registration

of the alleged marriage between the first petitioner and the second petitioner held on 10.11.2006 has been duly registered. In my considered opinion, the said registration would give rise to a presumption that there was such a marriage between the first petitioner and the second petitioner on 10.11.2006. At the same time, I have to add that the said presumption is only rebuttable. It is for the petitioners to prove before the trial Court as to whether there was any such marriage solemnised and what are the circumstances under which the said marriage came to be registered before the Marriage Registrar at Koodalur. Thus I am not in a position to accept the said contention of the learned counsel for the petitioners.

11. Regarding the third contention, that in the complaint, the form of marriage has not been stated, also cannot be accepted. In my considered opinion, in the Marriage Register, the form of marriage undergone would be certainly available. Therefore, the non mentioning about the form of marriage in the complaint cannot be a ground to quash the same.

12. The next contention raised by the learned counsel for the petitioner that the alleged occurrence leading to the offence punishable u/s 406 I.P.C took place in the year 2005 whereas the alleged occurrence leading to the offence u/s 494 I.P.C took place in the year 2006 and the clubbing of both the occurrences in a single complaint is not correct, has got to be accepted. When an identical question arose before a learned single Judge of this Court in 1992 Law W (Cri) 159, (cited supra) the learned single Judge of this Court has held that it would be proper to quash the complaint respect of one offence With liberty to the party to prefer a private complaint, if so advised in respect of the said of fence, leaving the Court to proceed further in respect of the other offence.

13. When this legal position was expressed by this Court, the learned counsel for the petitioner agreed that the complaint in respect of the offence u/s 406 I.P.C may be quashed with liberty to him to prefer a separate private complaint in respect of the said offence.

14. I have considered the said position of law and also facts involved in this case. I am fully satisfied that in the complaint, clubbing of two offences which took place at different times, and at different places should not have been entertained; Therefore, as per the law laid down by this Court in the case cited supra, in so far as the offence u/s 406 I.P.C is concerned, it is liable to be quashed with liberty to the respondent to prefer a separate private complaint regarding the same. In so far as the offence u/s 494 I.P.C is concerned, the trial Court can proceed further and dispose of the same in accordance with law as indicated below.

15. In the result, the order of the lower Court is modified and the following order is passed:

i) The complaint, in so far as the offence u/s 406 I.P.C is concerned, is quashed with liberty to the respondent to prefer a separate private complaint, if so

advised and if any such complaint is preferred, the time taken in prosecuting the present case before the lower court as well as before this Court, shall be excluded for calculating the period of limitation;

ii) In so far as the offence u/s 494 I.P.C. is concerned, the order of the trial Court is confirmed and the same shall be tried in accordance with law; and

iii) In view of the law laid down by the Hon"ble Supreme Court in 2007 SAR (Cri) I (Manish Ratan & Ors. v. State of M.P. & Anr.), the case in so far as the offence u/s 494 I.P.C. is concerned, shall be transferred to the Judicial Magistrate Court, Pollachi who shall try the case in accordance with law and dispose of the same as expeditiously as possible.