

(1990) 07 MAD CK 0117

In the Madras High Court

Case No : Criminal M.P. No"s. 7785 and 8403 of 1985

R. Nammalwar and 3 Ors. and Uma and Others

APPELLANT

Vs

Govindaraju

RESPONDENT

Date of Decision : 11-07-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 109, 494

Citation : (1992) 1 DMC 322

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : K. Mohanram, N. Natarajan and T.R.K. Kumarasingh, for the Appellant; N.T. Vanamamali, Raghupathy and M. Rajasekaran, for the Respondent

Final Decision : Dismissed

Judgement

Arunachalam, J.

Both these petitions are disposed of together since they relate to the same calendar case, in which the petitioners are the accused.

1. In CrI. M.P. No. 7785 of 1985 the petitioners are accused 1, 3, 4 and 7 in C.C. No. 895 of 1985 on the file of the Sub Divisional Judicial Magistrate, Dindigul subsequent to the filing of this petition, the second petitioner Rangaswami Naicker (third accused) and the fourth petitioner Srinivas Naicker (seventh accused) died. Therefore, this petition is now restricted to R. Nammalwar first petitioner (first accused) and Subbulakshmi, the third petitioner (fourth accused). The three petitioners in CrI. M.P. No. 8403 of 1985 are respectively accused 2, 5 and 6 in the same calendar case.

2. Both these petitions have been filed to call for the records and quash the proceedings in C.C. No. 895 of 1985 on the file of the trial Court as not maintainable and an abuse of process of Court.

3. A few facts are necessary for the disposal of these petitions. The respondent

Govindaraju is the elder brother of Vanaja who had married the first accused (first petitioner in CrI. M.P. No. 7785 of 1985 on 26th May 1980. The third petitioner Sub-bulakshmi (fourth accused) in CrI. M.P. No. 7785 of 1985 is the mother of the first petitioner. The petitioners in CrI. M.P. No. 8403 of 1985 are respectively the alleged second wife of Nammalwar (first accused) and the father and mother of the alleged second wife Uma. The offences alleged against the petitioners are punishable under Ss. 494 1 P.C. and 494 read with Section 109 I.P.C. The respondent, after obtaining leave of the trial Court u/s 198(1)(c) Cr. P.C, filed a private complaint against the petitioners and two other accused who are since deceased, containing the following salient allegations: Vanaja, the younger sister of the respondent, was married to the first accused on 26th May 1980 at Nadayaneri village, soon after the marriage, the spouses lived together at Nadayaneri. Some time thereafter, due to the instigation of accused 3 and 4, Vanaja was pestered to get jewellery and cash from her parental house by the first accused. Vanaja could not accede to the demand made by her husband due to the poor family circumstances of her parents. In or about October 1980, Vanaja was thrown out of the marital house by accused 1, 3 and 4. Some time in February 1981 the fourth accused took Vanaja over again to the marital house with the consent of her parents. Vanaja lived happily for about one or two months and thereafter, accused 1, 3 and 4 reiterated their dowry demand. On 14-7-1981 Vanaja was sent out from the house of her husband after ill-treatment, leading to her taking shelter in the house of her mother, situated within the jurisdiction of the trial Magistrate.

4. The complaint also states that the first accused had filed a petition for divorce against Vanaja and the same was pending adjudication at the time when the complaint was filed. Vanaja had also filed a petition for restitution of conjugal rights. While matters stood thus, the respondent was proceeding by a bus to inspect his landed property on 17-3-1985. He was proceeding from Virundhunagar to Nadayaneri. He noticed in the bus accused 1 and 2 seated together very closely and travelling. The shocked respondent followed them to Nadayaneri and found them entering into the house of the first accused. The respondent made enquiries at Nadayaneri and learnt from witnesses cited in the complaint, that the first accused had married the second accused at Sankarapperi village and they were living together as husband and wife. The respondent made enquiries at Sankarapperi and found out that in fact, the first accused had married the second accused on 27-1-1985 between 7.30 and 9 A.M. in the house of the fifth accused, actively instigated by the other accused in the case.

5. On receipt of this complaint, after recording the sworn statement of the respondent, the trial Magistrate took the case on file for the offences of bigamy and abatement of bigamy against the petitioners. Soon after the process was served, the petitioners have chosen to invoke the inherent jurisdiction of this Court to quash the pending proceedings.

6. Mr. N. Natarajan, learned Senior Counsel appearing for the petitioners in CrI. M.P. 8403 of 1985, contended that to prove abatement specific averment must be made in the complaint and bald assertions will not be sufficient. According to learned Counsel, abatement being a distinct office by itself, lack of particulars in the complaint would necessarily lead to the prosecution being struck down as far as accused 2, 5 and 6 are concerned. He would further contend that the petitioners in CrI. M.P. No. 8403 of 1985 belong to Sankarapperi in Tirunelveli district, while the other accused in the case belong to Nadayaneri village in Kamarajar district. There was, therefore, no scope for the petitioners in CrI. M.P. No. 8403 of 1985 to have had prior knowledge of the first wedding between the respondent's sister and the first accused. A mere statement in the complaint that they knew about the subsisting marriage between the first accused and Vanaja will not be sufficient.

7. Mr. K. Mohan Ram, learned Counsel appearing for the petitioners in CrI. M.P. No. 7785 of 1985 contended, that but for Section 7-A of the Hindu Marriage Act there could not be a valid marriage between the first and the second accused. He contended that Section 7-A was introduced as an amendment to Hindu Marriage Act by the State of Tamil Nadu and this provision not being applicable to other States, the concept of equality before law, got thwarted. He would also submit that the accusations made in the complaint were vague and will not justify the continuance of the prosecution. Both the Counsel referred to over acts attributed to each one of the petitioners in the complaint to substantiate their submissions, that those acts would not be sufficient to attract the ingredients of abatement defined in Section 107 I.P.C. Both Counsel further contended that the respondent was not an eye-witness to the alleged bigamous marriage and his complaint and sworn statement being based on inadmissible, hearsay evidence, the trial Magistrate ought not to have taken cognizance without examining at least one of the eye-witnesses who had, infact attended the second marriage between the first and second accused.

8. Mr. N.T. Vanamamalai, learned senior Counsel appearing on behalf of the respondent, contended that at this stage, the Court is concerned only with the allegations made in the complaint and scrutiny of such allegations, attracting the ingredients of the offences taken cognizance of. According to him, if on a reading of the complaint as a whole, taking note of the allegations made therein, in the light of the statement on oath of the complainant, the ingredients of the offence" offences were disclosed and there was no material to show that the complaint was mala fide, frivolous or vexatious, this Court will not be justified, in exercising the powers u/s 482 Cr. P.C., to put an end to the pending proceedings, taken cognizance of by the trial Magistrate in the exercise of his discretion.

9. I have carefully considered the rival contentions placed before me, by either Counsel, it is, no doubt, true as contended by Mr. N. Natarajan, that the Supreme Court in R.P. Kapur Vs. The State of Punjab, ; Rajindra Nath Mahato Vs. T. Ganguly, Dy. Superintendent and Another, and Smt. Nagawwa Vs. Veeranna

Shivalingappa Konjalgi and Others, had held, that the question which can be gone into at the stage of issue of process, when exercising powers u/s 482, Cr. P.C., will include consideration of the availability of any legal evidence to issue process, which would take in its fold allegations made against the accused constituting the offences alleged but there being either no legal evidence adduced in support of the case or the evidence adduced clearly and manifestly failing to prove the charge and the discretion exercised by the Magistrate in issuing process was capricious and arbitrary having been based on wholly inadmissible evidence in view of the latest pronouncement of the Apex Court in Dhanalakshmi Vs. R. Prasanna Kumar and Others, it will not possible to go, meticulously into these aspects. The learned Counsel for the respondent however would submit that the word "evidence" referred to by the Apex Court in the earlier decisions, will have to be viewed in a broader sense. All that is necessary in terms of the law laid down in Dhanalakshmi Vs. R. Prasanna Kumar and Others, is that if it appears on a consideration of the allegations in the complaint in the light of the statement on oath of the complainant, that the ingredients of the offences were disclosed and there was no material to show that the complaint was mala fide, frivolous or vexatious, there would be no justification for interference by the High Court while exercising the powers u/s 482 Cr. P.C. The facts in Dhanalakshmi Vs. R. Prasanna Kumar and Others, will be very relevant to dispose of these petitions. Detailed facts in Dhanalakshmi's case AIR 1960 SC 494 are available in Dhanalakshmi Vs. R. Prasanna Kumar and Others, where P.K. Sethuraman J., of this Court had rendered a decision, which was subsequently challenged before the Supreme Court leading to the pronouncement in Dhanalakshmi Vs. R. Prasanna Kumar and Others, . The facts narrated by P.K. Sethuraman, J., show, that on 31-8-1986 the complainant Dhanalakshmi, accompanied by her father and two others, went to the residence of the first accused at Mylapore to meet the latter for effecting a compromise as Suggested by the Court. in O.P. No. 340 1985 pending between the spouses. The first accused was not at home and there was a lady in the residence of the first accused and on enquiry, the lady told them that her name was Rajakumari and she was the wife of the first accused having married him in the month of June 1986 at Thanjavur. On verification, the complainant came to know, that the said Rajakumari was the daughter of the fifth and sixth accused and that accused 1 and 2 were living together as husband and wife in that house and she further came to understand that the marriage between them had been performed secretly in the presence of the other accused and some people close to the accused Naturally, the complainant and her father were not aware about the date and the place of the marriage. In the sworn statement, same facts were repeated and Dhanalakshmi asserted that she was the wife of the first accused and on enquiry in the neighbourhood, she became aware that her husband had married Rajakumari secretly with the active abatement of the other accused, about a year prior to that date. It was on those facts that the Court Apex rendered its decision in Dhanalakshmi Vs. R. Prasanna Kumar and Others, .

10. Turning to the facts in these petitions, the respondent has stated that while proceeding in bus on 17-3-1985 from Virudhunagar to Nadayaneri, he saw accused 1 and 2 seated together in very close proximity and conversing between themselves, the shocked respondent followed them and found both of them entering into the house of the first accused. The enquiries made by him later at Nadayaneri revealed that the first accused had married the second accused, at Sankarapperi village, actively abetted by the other accused, though his (A1) marriage with the respondent's sister was in subsistence. Enquiry by the respondent at Sankarapperi where the bigamous marriage was alleged to have been performed, confirmed the information he had obtained at Nadayaneri. Therefore, on these allegations, if the trial Magistrate was satisfied that issue of process was necessary, since there was sufficient ground to proceed, in the light of the law laid down in *Dhanalakshmi Vs. R. Prasanna Kumar and Others*, this Court will not be justified in exercising its powers u/s 482 Cr. P.C. to quash the pending proceedings. However, learned Counsel appearing for the petitioners as well as learned Counsel for the respondent agree that as far as the sixth accused (third petitioner in CrI. M.P. No. 8403 of 1985) is concerned, there is no prima facie allegation to bring her within the mischief of Section 107 I.P.C. All that has been stated in the complaint is that she distributed sandalpaste, kunkumam and flower to the invitees. This act of the sixth accused, not being a vital part in a bigamous marriage, and even if taken at its face value, will not "intentional aid and active participation" in the bigamous marriage, the proceedings in C.C. No. 895 of 1985) pending as against her, are liable to be quashed. In respect of the other petitioners, the prosecution cannot be halted in its track and will have to be allowed to survive to reach its logical termination. Sufficiency of evidence will have to be canvassed before the trial Court.

11. As far as the contention of Mr. Mohan Ram regarding Sec, 7- A of the Hindu Marriage Act as amended by the State Government, it can have no substance, for the validity of the provision has been upheld by this Court.

12. For the reasons aforesaid, Criminal M.P. No. 7785 of 1985 is dismissed and Criminal M.P. No. 8403 of 1985 is allowed in part in respect of the third petitioner Managammal (sixth accused before the trial Court and is dismissed as against the others.