

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No.1817 OF 2019

(Arising out of Special Leave Petition (Crl.) No.741 of 2019)

M. JAYANTHI

... APPELLANT

Versus

K.R. MEENAKSHI & ANR.

... RESPONDENTS

O R D E R

1. Leave granted.
2. Aggrieved by the order of the High Court passed in exercise of the inherent power conferred by Section 482 of the Code of Criminal Procedure, quashing a criminal complaint filed by her against her husband (*the second respondent herein*) and the first respondent for the alleged commission of the offences punishable under Sections 493, 494, 120-B and 506(II) IPC, the appellant, who is the legally wedded wife of the second respondent, has come up with the above appeal.
3. The appellant filed a complaint under Section 200 Cr.P.C. on the file of the V Metropolitan Magistrate Egmore, Chennai in CC No.785 of 2012 alleging that the respondents were guilty of committing offences punishable under Sections 493, 494, 120-B and 506(II) IPC.
4. The sum and substance of the complaint was that the appellant got married to the second respondent on 17.01.1983 and the couple got two children from the wedlock. The matrimonial relationship got strained leading to the filing of certain cases. According to the appellant, the second

respondent *herein* married the first respondent, even during the subsistence of the first marriage and started living with her. It was the further case of the appellant that the second respondent allowed the first respondent even to take over the family business and drove their children out of the company. The complaint filed by the appellant states specifically that the second respondent married the first respondent in the year 2008, during the subsistence of the first marriage with the appellant and that when the first respondent conceived, a religious ceremony was performed by the second respondent on 16.10.2011 on a grand scale in a hotel in the IT Express way, Chennai. Therefore, the appellant complained that the respondents were guilty of commission of the offences indicated supra.

5. After the trial court took the complaint on file and issued process, the first respondent *herein* filed a petition under Section 482 Cr.P.C. on the file of the High Court seeking quashing of the complaint. The main contention of the first respondent in her quash petition was that in order to attract the offence punishable under Section 494 IPC, a marriage must have taken place between her and the second respondent. In so far as the offence punishable under Section 493 IPC is concerned, the contention of the first respondent in her quash petition was that the appellant had no *locus standi* to complain and that if at all, it was she, who was entitled to invoke Section 493 IPC. In so far as the offence of criminal intimidation punishable under Section 506 Part II is concerned, it was the contention of the first respondent that as a senior officer working in a company, she gave adverse

reports against the sons of the appellant who were working in the same company which led the management to take action against them and that, therefore, she cannot be prosecuted for carrying out her lawful duties as a senior officer of the company.

6. The High Court allowed the petition of the first respondent and quashed the criminal complaint, primarily on the ground that in order to attract the offence punishable under Section 494 IPC, the complainant ought to plead the form of marriage, the witnesses in whose presence the marriage took place and the details about the time, date and place of the marriage. Though the appellant produced the copy of the Government Gazette published on 21.09.2011, in which the first respondent described herself as the wife of the second respondent, the High Court brushed aside the same on the ground that being a public document under Section 35 of the Indian Evidence Act, 1872, it has to be proved through other evidence. Accordingly, the High Court quashed the criminal complaint.

7. The grievance of the appellant, against the order of the High Court is that even at the stage of taking cognizance and issuing process, the High Court has thrown the complaint out, on the ground of lack of evidence. The role of the Court in a petition under Section 482 of the Code for quashing a complaint is limited, and that while exercising jurisdiction under Section 482 of the Code, the High Court should not embark upon an enquiry to see whether the allegations are likely to be established or not. Therefore, the learned counsel for the appellant contended that the High Court committed

a serious error of law in invoking its inherent power to quash a complaint made by lawful wife against her husband and the lady whom he had taken as a second wife.

8. In response, it was contended by the learned counsel for the first respondent that none of the ingredients of the offence punishable under Sections 493 and 494 were made out and that in the light of Section 17 of the Hindu Marriage Act, 1955, an offence of bigamy will be made out only if a marriage has actually taken place. In so far as the allegations related to the other offences are concerned, it was contended by the learned counsel for the first respondent that they were only incidental to the main complaint and that they cannot stand independently.

9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the pre-conditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

10. In the case on hand, the appellant had made a specific averment in her complaint that the second respondent married the first respondent in

the year 2008 and that a religious ceremony known as seemandham was performed in a hotel on 16.10.2011, during the pregnancy of the first respondent through the second respondent. It was also alleged by the appellant in her complaint that there was a threat to her life and property from the respondents and that the sons of the appellant who were employed in the company which constituted the family business, were also expelled and are under threat and coercion.

11. Apart from pleading specifically about the marriage contracted by the second respondent with the first respondent, the appellant had also produced a Gazette notification published by the Tamil Nadu Government on 13.09.2011 where the first respondent had described herself as the wife of the second respondent.

12. Unfortunately, the High Court put the cart before the horse and held that the appellant had not produced any evidence to prove the entry in the Government Gazette though it is a relevant fact under Section 35 of the Indian Evidence Act. Much before the case could reach the stage of trial, the High Court shut the door for the appellant and pre-concluded the issue as though there was no evidence at all. This is completely contrary to law.

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage. Therefore, we are of the considered view that the

appeal deserves to be allowed and the impugned order of the High Court is liable to be set aside. Accordingly, the appeal is allowed and the impugned order is set aside. Since the criminal complaint is of the year 2012, the trial Court shall expedite the trial. It is made clear that the trial Court shall independently deal with the complaint and the evidence on its own merits uninfluenced by any observation made by the High Court or this Court. Ordered accordingly.

.....**J**
(N.V. Ramana)

.....**J**
(Ajay Rastogi)

.....**J**
(V. Ramasubramanian)

New Delhi
December 02, 2019.

ITEM NO.43

COURT NO.2

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (Crl.) No.741/2019

(Arising out of impugned final judgment and order dated 22-10-2018 in CRLP No. 21636/2012 passed by the High Court of Judicature at Madras)

M. JAYANTHI Petitioner(s)

VERSUS

K.R. MEENAKSHI & ANR. Respondent(s)

(FOR ADMISSION and I.R.)

Date : 02-12-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE AJAY RASTOGI
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s)

Mr. Arvind Kr. Sharma, Adv.
Mr. Aniteja Sharma, Adv.
Mr. Raj Kishor Choudhary, AOR

For Respondent(s)

Mr. Astha Tyagi, Adv.
Mr. V. Balaji, Adv.
Mr. Asaithambi MSM, Adv.
Mr. Atul Sharma, Adv.
Mr. C. Kannan, Adv.
Ms. Sripradha Krishnan, Adv.
Mr. Pravesh Thakur, Adv.
Mr. Rakesh K. Sharma, AOR

Mr. C. K. Sasi, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(VISHAL ANAND)
COURT MASTER (SH)

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed Order is placed on the file)