SUPREME COURT OF INDIA

M.Saravana Porselvi

Vs.

A.R. Chandrashekar @ Parthiban

Crl.A.No.967 of 2008

(S.B. Sinha and Lokeshwar Singh Panta JJ.)

27.05.2008

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Appellant is an advocate. She was married to Respondent No.1 on or about 1.12.1993.

> "The parties indisputably are living separately since 1996. She allegedly filed a complaint before the All Women Police Station at Virudhunagar. An enquiry was directed to be conducted. As per the advice of the officers of the said Police Station as also the relatives of the parties, they entered into an agreement for divorce on or about 24.7.1996. It was registered in the office of the Joint Sub-Registrar, Virudhunagar being Registration No.146 of 1996. Appellant also received a sum of Rs.25,000/- towards permanent alimony which was acknowledged by granting a stamped receipt therefor. The said purported divorce is said to have taken place in terms of the custom prevailing in the community which the parties belong."

3. Admittedly, the first respondent married again in 1998. He has two children out of the said wedlock.

4. Appellant, however, filed a complaint petition against the respondent Nos. 1, 2 and 3 herein, i.e., her husband and parents-in-law in May, 2006 before the Women Cell at Chennai, inter alia, on the premise that the first respondent has married for the second time which fact she came to learn on receipt of a summons in respect of a petition filed by the first respondent under Section 13(1)(a) of the *Hindu Marriage Act, 1955*.

5. A First Information Report (FIR) was lodged pursuant to the said complaint which was registered as Crime No.5 of 2006. Respondents were arrested.

> "An application for quashing the said FIR was filed before the High Court. By reason of the impugned judgment, the said application has been allowed."

6. Mr. Gurukrishna Kumar, learned counsel appearing on behalf of the appellant, would submit that in a case of this nature, where investigation into the allegations made in the complaint has been going on, the High Court should not have passed the impugned judgment, upon entering into the purported defence raised by the respondents, particularly when the State itself, in its counter affidavit filed before the High Court, categorically stated that a prima facie case had been made out for investigation.

7. Mr. R. Shunmugasundaram, learned Senior Counsel appearing for the State, however, would submit that the High Court cannot be said to have committed an error as the deed of divorce dated 24.7.1996 was a registered document and, thus, a public document. If, therefore, execution of the said document has not been denied, the impugned judgment should not be interfered with.

8. Mr. V. Kanakraj, learned Senior Counsel appearing on behalf of the respondent Nos.1, 2 and 3, would submit that the mala fide on the part of the appellant is evident in view of the fact that such a complaint petition has been filed after a period of 10 years. The learned counsel contended that as the divorce had taken place 10 years back, it is futile to urge that the complaint petition filed after such a long time, should not be considered to be an abuse of the process of the Court.

9. The core question herein is as to whether the High Court, in a case of this nature, could exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.

10. The factual backdrop of the matter is not in dispute.

> "The customary divorce may be legal or illegal. The fact that such an agreement had been entered into or the appellant had received a sum of Rs.25,000/- by way of permanent alimony, however, stands admitted. The document is a registered one. Appellant being in the legal profession must be held to be aware of the legal implication thereof. If the contents of the said agreement are taken to be correct, indisputably the parties had been living separately for more than ten years. How then a case under Section 498A of the *Indian Penal Code* can be said to have made out and that too at such a distant point of time is the question, particularly in view of the bar of limitation as contained in Section 468 of the Code of Criminal Procedure. Even otherwise it is unbelievable that the appellant was really harassed by her husband or her in-laws."

11. We are not oblivious of the fact that there does not exist any period of limitation in respect of an offence under Section 494, as the maximum period of punishment which can be imposed therefor is seven years.

12. But no allegation has been made out in regard to commission of the said offence so far as the respondent Nos. 2 and 3 are concerned. If even for exercising its jurisdiction under Section 482 of the *Code of Criminal Procedure*, the High Court has taken into consideration an admitted document, we do not see any legal infirmity therein. If it is a case of customary divorce, the question in regard to the existence of good custom may have to be gone into in a civil proceeding. But a criminal prosecution shall not lie. It was initiated mala fide. Thus, it is allowed to continue, the same shall be an abuse of the process of court.

13. For the reasons aforementioned, there is no legal infirmity in the impugned judgment. The appeal is dismissed accordingly.