

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.08.2020

DELIVERED ON : 09.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.(MD)No.17504 of 2014

and

M.P.(MD).No.1 of 2014

Sudalaimani

.. Petitioner

-vs-

1.The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram.

2.The Superintendent of Police,
Thoothukudi,
Thoothukudi District.

3.The Deputy Superintendent of Police,
Kamuthi,
Ramanathapuram District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the impugned order passed by the first respondent in his proceedings PR.No. 43/2013 under Rule 3(b) dated 20.08.2014 and quash the same.

WEB COPY

For Petitioner : Mr.Veera Kathiravan
Senior Counsel
for Mr.V.Muthukamatchi

For Respondents : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

ORDER

The writ petitioner seeking to set aside the order of punishment imposed by the second respondent confirmed by the first respondent in his proceedings PR.No.43/2013 under Rule 3(b) Tamil Nadu Police Subordinate Service (Discipline and &A) Rules, 1955, dated 20.08.2014 and quash the same.

2. The service matrix that are required for the determination of this writ petition are as follows:

(a) The petitioner was enlisted as Grade II Police Constable in Tamil Nadu Special Police, VIIIth Battalion, Chennai on 16.06.1993 and transferred to the Armed Reserve, Thoothukudi District on 23.10.1997. He was transferred to Taluk Police and promoted as Gr.I PC and Head Constable on 16.06.2003 and 16.06.2008 respectively. During his service, he married one Muthammal @ Muthulakshmi, a Staff Nurse on 23.06.1996 and had two male children. During his service at Kovilpatti Police Station,

the petitioner married one Jeevarathinam, Woman Sub Inspector of Police on 28.01.2007. One female child and one male child were born to Jeevarathinam on 30.12.2007 and 17.06.2010 respectively.

(b) It appears from the records that in view of the above status position, the grave misconduct of the petitioner is having married one Woman Sub Inspector of Police, Jeevarathinam, while his first wife Muthammal @ Muthulakshmi was living with two children and thereby violated Rule 23(1)(b) of the Tamil Nadu Subordinate Police Officer's Conduct Rules, 1964 and hence the petitioner was issued with a charge memo in PR.No.43/2013 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (D&A) Rules, 1955 on 14.03.2013 based on the enquiry report of the Additional Superintendent of Police, Crime, Thoothukudi District and on the preliminary enquiry report of the Deputy Superintendent of Police, Ramanathapuram Sub Division.

(c) The Assistant Superintendent of Police, Kamuthi Sub Division, who was appointed as the oral enquiry officer had conducted the oral enquiry and held the charge against the petitioner as proved through his minute dated 24.03.2004. The petitioner acknowledged the minute copy on 12.07.2014 and submitted his further explanation on 04.08.2014.

(d) The Deputy Inspector General of Police, Ramanathapuram Range, after having gone through the charge memo, statements of prosecution witnesses, prosecution exhibits, explanation of the petitioner, minute and the further representation of the petitioner, arrived a conclusion that the petitioner has violated Rule 23(1)(b) of the Tamil Nadu Subordinate Police Officer's Conduct Rules, 1964 and has awarded the petitioner a punishment of "Reduction in rank by the stage from the post of Head Constable to Gr.I PC for a period of two years to be spent on duty from the date of receipt of the order" through his order in PR No.43/2013 dated 20.08.2014.

3. The sum and substance of the submissions of the learned Senior Counsel, Mr.Veera Kathiravan is that there was a customary divorce between the petitioner Sudalaimani and his wife Muthammal @ Muthulakshmi on 02.08.2006 and subsequently the petitioner married the widow Jeevarathinam, Woman Sub Inspector of Police on 28.01.2007 and the petitioner has not violated any Rules.

4. Mr.J.Gunaseelan Muthiah, the learned Additional Government Pleader appearing for the respondents would contend that the petitioner

during his service married one Muthammal @ Muthulakshmi, a Staff Nurse in Keela Eral Primary Health Centre on 23.06.1996 and had two male children through Muthammal @ Muthulakshmi. It is said that the said Muthammal and the petitioner got themselves separated due to frequent misunderstanding between them through their community elders on 02.08.2006. This practice of dissolution would, however, not be approved as a legal divorce. The contention of the petitioner that based on the customary practice of dissolution and on obtaining permission from his first wife Muthammal @ Muthulakshmi, he married Jeevarathinam as second wife could not be countenanced. The second marriage was also not duly informed to his superiors and department.

5. Heard both side and perused the records.

6. Perusal of the material records show that

(i) a charge memo was issued under Rule 3(b) of Tamil Nadu Police Subordinate Service (D&A) Rules, 1955, based upon the enquiry report of the Additional Superintendent of Police (Crime), Thoothukudi District, the third respondent herein.

(ii) In the enquiry, the mother of the second wife was examined as

PW.1 and the brother of the second wife, namely, Jeyaseelan was examined as PW.2, and the Deputy Superintendent of Police, the third respondent herein was examined as PW.3 had conducted the preliminary enquiry and PW.4, Additional Deputy Superintendent of Police, has forwarded the enquiry report. PW.5-Tmt.Muthammal @ Muthulakshmi, W/o.Sudalaimani was examined.

(iii) The enquiry officer held that the charges are proved. On appeal, the first respondent held that though the second marriage was not at all solemnized or registered in a proper manner. However, the first respondent/Appellate Authority has rendered a finding that “though the marriage with the Jeevarathinam was not solemnized properly or registered, the delinquent had violated Rule 23(1)(b) of the Tamil Nadu Subordinate Police Officer's Conduct Rules, 1964 and accordingly, passed order of punishment as reduction in rank by such from the post of Head Constable to Grade I PC for the period of two years to be spent on the duty from the date of receipt of the order.

(iv) As I find that both the Disciplinary Authority as well as the Appellate Authority has come to the conclusion that the alleged second marriage of the delinquent with the Jeevarathinam was not solemnized properly or registered, however, for reasons unknown, have chosen to inflict

the punishment.

(v) Since, in the written explanation, the petitioner himself has stated that he has married Jeevarathinam after proper customary divorce, I am inclined to consider the above submission of the Mr.Veera Kathiravan, learned Senior Counsel in this regard.

7. The crux of the charge framed against the petitioner is that the delinquent was reprehensible conduct in having married one Jeevarathinam, Woman Sub Inspector of Police, when his first wife Muthammal @ Muthulakshmi was living and thereby violated the Rule 23(1)(b) of the Tamil Nadu Subordinate Police Officers' Conduct Rules 1964 and tarnished the image of the Police Force.

8. In support of charge, the learned Additional Government Pleader contended that the contention of the petitioner that his first marriage was dissolved by entering into a local customary divorce could not be countenanced because such practice is not legally valid and relied upon the decision of this Court in W.P.No.4202 of 2007 in the case of *P.Soundarrajan v. Principal Secretary to Government of Tamil Nadu and others*, based on various judgments in *G.Sekar v. Commissioner of Police*

(2013) 3 MLJ 520, *Javed v. State of Haryana* LN IND 2003 SC 596, *M.S.Monn vs. Union of India* 1976 (1) SLR 350 and *Sushilkumar Singhal v. Punjab National Bank* (2010)7MLJ 400 (SC).

9. The summary of the statement of departmental witnesses are as under:

(i) PW.1 Tmt.Philominal-the mother of Jeevarathinam deposed that the first husband of her daughter was murdered in the communal incident in the year 1997. She had arranged the marriage of her daughter in 2007 with delinquent, who was already having one wife and two children and the marriage was arranged as desired by her daughter in consideration of her future life and her son Jeyaseelan (PW.2) got animosity over the civil dispute filed by her in O.S.No.301/2010 against his fraudulent execution of a sale deed in respect of the house site owned by her. PW.1 also stated that because of the civil dispute with her son, his son had sent a false petition against her daughter and delinquent about her marriage. PW.2-Jeyaseelan had sent petitions against her sister's marriage alleging contravening of the Police Conduct Rules. The alleged second wife Jeevarathinam stood as a widow consequent to the murder of her husband in a communal riot, but the petitioner did not inform his superiors about his proposal of marrying

Jeevarathinam as his second wife.

(ii) PW.3, the Deputy Superintendent of Police, Ramanathapuram Sub Division, the preliminary enquiry officer, had stated in his report that the delinquent had married one Jeevarathinam, Woman Sub Inspector of Police and got children through her by name Harishma and Mathesh and submitted his report to initiate departmental action against the delinquent and Woman Sub Inspector of Police, while PW.4-ADSP, Crime, Tirunelveli District enquired the petition sent by the PW.2 and forwarded his report for initiating departmental action.

(iii) PW.5-Tmt.Muthammal @ Muthulakshmi, W/o. Sudalaimani (delinquent) has deposed that she fallen sick during 2005 and subsequent to her marriage with Sudalaimani, there was misunderstanding between them. During 2006, they entered into mutual consent dissolution of marriage deed in the presence of Village elders and got separated locally as per their custom. PW.5 added that when her husband expressed his willingness to marry the Jeevarathinam, she did not object to the marriage considering the happiness of her husband. During the cross-examination by the Enquiry Officer PW.5-Muthulakshmi had stated that she had given her consent to her husband to marry the Jeevarathinam as she is not living with her husband for 4 years due to dissolution of marriage as per village custom and

now living separately.

10. Mr.Veera Kathiravan, learned Senior Counsel appearing for the petitioner relied on the decision reported in **2002 (2) SCC 637** and **2005 (9) SCC 407**. Mr.Gunaseelan Muthiah, learned Additional Government Pleader appearing for the respondents relied on the decision reported in **(2010) 7 MLJ 400 (SC)**.

11. In the decision relied on by the learned Senior Counsel for the petitioner in **2005 (9) SCC 407 (Subramani and Ors. v. M.Chandralekha)** it is held that

“ the requirement to claim benefit of prevalence of customary right to divorce in a community must be specifically pleaded and established by the person propounding such custom and as per Hindu Law, divorce was not recognised as a means to put an end to marriage, which was always considered to be a sacrament, only exception being where it was recognised by custom ”.

12. In the second decision relied on by the learned Senior Counsel in **2002 (2) SCC 637 (Yamanaji H.Jadhav v. Nirmala)**, it has been held that

“prevalence of customary divorce in community to which parties belong, contrary to general law of divorce must be specifically pleaded and established by person propounding such custom, otherwise no submission based on it can be entertained by the Court.”

13. In the decision relied on by the learned Additional Government Pleader in W.P.No.4202 of 2007 dated 17.06.2013, wherein in paragraph No.16, it has been held that

“...even if the second marriage is contracted with the knowledge of the first wife and eventhough the first wife does not prosecute the husband for the same, it cannot be contended that there was no offence of bigamy committed by the husband and it is very clear that the act by a person entering into bigamous marriage is an act in involving moral turpitude in terms of Rule 23 of Tamil Nadu Subordinate Police Officers Conduct Rules 1964 and therefore it is certainly a misconduct”.

WEB COPY

14. On the combined reading of the above decisions, this Court finds that it is not disputed that as per Hindu Law, divorce was not recognized as a means to put an end to marriage which was always

considered to be a sacrament with only exception where it is recognized by custom. After coming into force the Hindu Marriage Act, 1955 (for short "the Act") they can seek to put an end to their marriage by either obtaining a declaration that the marriage between them was a nullity on the grounds specified in Section II or to dissolve the marriage between them on any of the grounds mentioned in Section 13 of the Act. While, Section 29 of the Act saves the rights recognized by custom or conferred by special enactment to obtain the dissolution of marriage, whether solemnized before or after commencement of the Act. Section 29 (2) of the Act reads :

"Nothing contained in this Act shall be deemed to affect any right recognized by custom or conferred by any special enactment to obtain the dissolution of a Hindu Marriage, whether solemnized before or after commencement of this Act."

15. It is well established by long chain of authorities that prevalence of customary divorce in the community to which parties belong, contrary to general law of divorce must be specifically pleaded and established by the person propounding such custom. I had an occasion to deal with similar situation on plea of customary divorce in S.A.No.699 of 2002, dated 12.09.2019 (**CDJ 2019 MHC 5656**) the petitioner has to

specific plead the existence of a custom in his community to dissolve the marriage by mutual consent or to prove the same by leading cogent evidence.

16. In my opinion the *sine qua non* of an enquiry on the ground that Rule 21 of the Conduct Rules has been violated is that the government servant concerned contracts a second marriage without permission from the appropriate authorities despite the first marriage or the previous marriage subsisting. If such a situation is admitted to exist, that Rule 23 of the Tamil Nadu Subordinate Police Officers' Conduct Rules 1964 is obviously violated, but if the plea is that the previous marriage does not subsist then the enquiry cannot proceed without a competent finding as to the subsistence of the previous marriage.

17. The only situations in which an enquiry as to the violation of Rule 23 of the Tamil Nadu Subordinate Police Officers' Conduct Rules 1964 can proceed departmentally or in what are called disciplinary proceedings are:--

- (a) *Where subsistence of the first marriage is admitted;*
- (b) *Where subsistence of the first marriage can be established*

without entering into complicated questions of law and fact;
(c) Where a Court of competent jurisdiction has held that the previous marriage subsists; and
(d) The dissolution of the previous marriage alleged by the officer/official charged with violation of Rule 23 can on the very face of it be held to be a false plea.

18. The core question that is to be decided in this case is that whether the plea of customary divorce is a valid defence in the departmental proceedings initiated for an action of bigamy as defined in Section 3(b) of the Tamil Nadu Police Rules. In other words, Personal Law of the petitioner on the point of dissolution of marriage under customary practice of dissolution of marriage viz-a-viz misconduct of offence of bigamy under the Service Rules governing the police personnels.

19. It remains to be stated that the statement of PW.5, namely, Muthammal @ Muthulakshmi, the first wife of the Sudalaimani assumes significance in view of the certain admissions made by her in her chief-examination. She has categorically stated that due to the misunderstanding between both as per the custom prevailing in the community, there was a customary divorce and the same was reduced into writing and also produced

Ex.B1 statement of witness of PW.5. It clearly supports the case of the petitioner.

20. As stated supra, during the cross-examination by the enquiry officer, PW.5 (first wife of the delinquent) as confirmed the existence of the marriage dissolution deed dated 02.08.2003 as projected by the delinquent, he not only confirmed the existence of the marriage dissolution deed also admit that the prevalence of the customary practice in the community to dissolve the marriage by dissolution deed in front of the elders also assumes significance.

21. At this juncture, I find that the plea raised by the delinquent about the prevalence of customary divorce in their community which was pleaded by the petitioner and the same was accepted by none other than the first wife herself only after the dissolution of the first marriage, he was contracted the second marriage.

22. It remains to be stated that the first wife if at all, the aggrieved person to file this complaint. Strangely it is the brother of the said Jeevarathinam (PW.2 and complainant), who had preferred the complaint

after a pretty long 3 years much after his sister had two children. The complaint by PW.2, (Jayaseelan brother of Jeevarathinam) that his sister had remarried after 3 years is as an offshoot of a civil case in O.S.No.301 of 2010 filed by his mother against his fraudulent execution of a sale deed in respect of the land owned by her mother. The complaint had been used by PW.2 (Jayaseelan) as a tool to intimidate the delinquent and Jeevarathinam and Jeevarathinam's mother PW.1, so as to abdicate their claim in the house property entangled in O.S.No.301 of 2010 and hence I find the very complaint is nothing but ruse to the civil dispute between the mother of the second wife and the brother of the second wife as rightly observed by the Appellate Authority.

23. Though the Appellate Authority has chosen to give a finding that the remarriage of delinquent with the Jeevarathinam, Woman Sub Inspector of Police, is not at all solemnized or registered in a proper manner, however chosen to held that the delinquent has violated Rule 23(1)(b) of the Tamil Nadu Subordinate Police Officer's Conduct Rules, 1964. I am unable to uphold the said finding in view of the finding rendered in the preceding paragraph that the second marriage is valid as the delinquent himself has admitted about the contract of second marriage and after obtaining the

customary divorce and hence, the charge is not made out.

24. The answer to the core question framed as supra is summarised as under:

1. Disciplinary Proceedings can be initiated even if second marriage is contracted with the knowledge of the first wife so also even if the first wife does not prosecute the husband for the same and hence the complaint given by the third party alleging contract of second marriage, a departmental proceedings can still be maintainable.

2. A plea of customary divorce is a valid defence in a departmental proceedings initiated for misconduct of bigamy under Service Rules/Conduct Rules.

3. To substantiate the said plea of customary divorce a specific plea has to be raised in the statement of defence by the delinquent officer and has to be proved on up to the decree of preponderance of probability and execution of the customary divorce as projected by the delinquent.

25. In fine, the finding rendered by the Disciplinary Authority and Appellate Authority and the punishment inflicted in the impugned order are set aside. Accordingly, this Writ Petition stands allowed. No Costs. Consequently, connected miscellaneous petition is closed.

09.09.2020

Index : Yes/No
Internet : Yes/No
PJJ

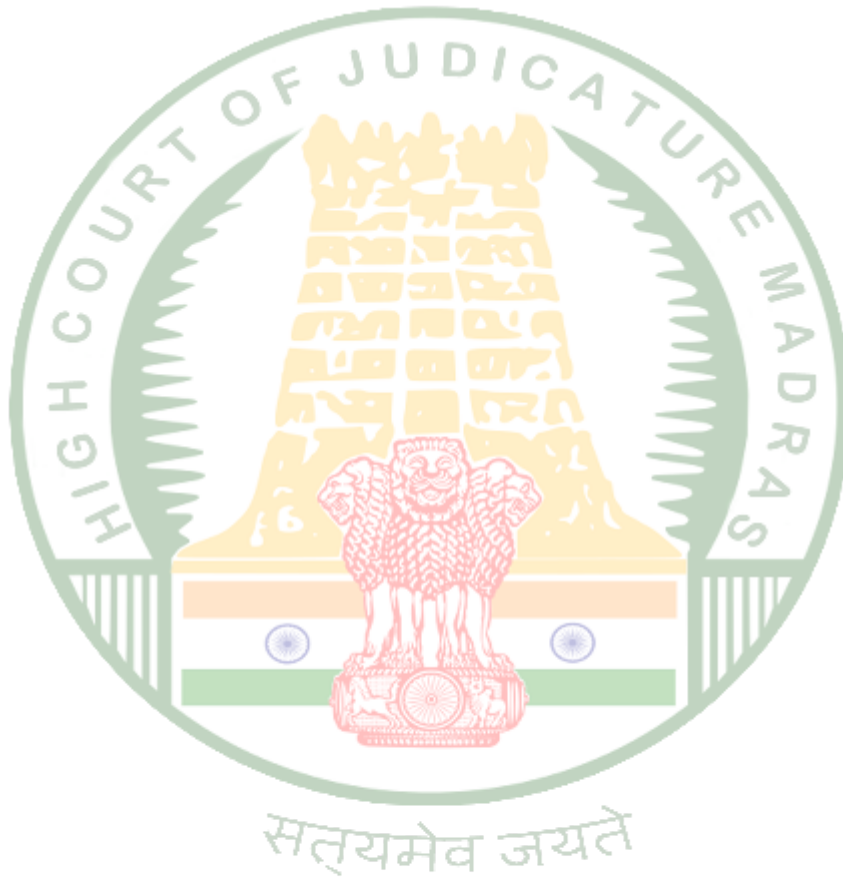
To

1.The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram.

2.The Superintendent of Police,
Thoothukudi,
Thoothukudi District.

3.The Deputy Superintendent of Police,
Kamuthi,
Ramanathapuram District.

WEB COPY

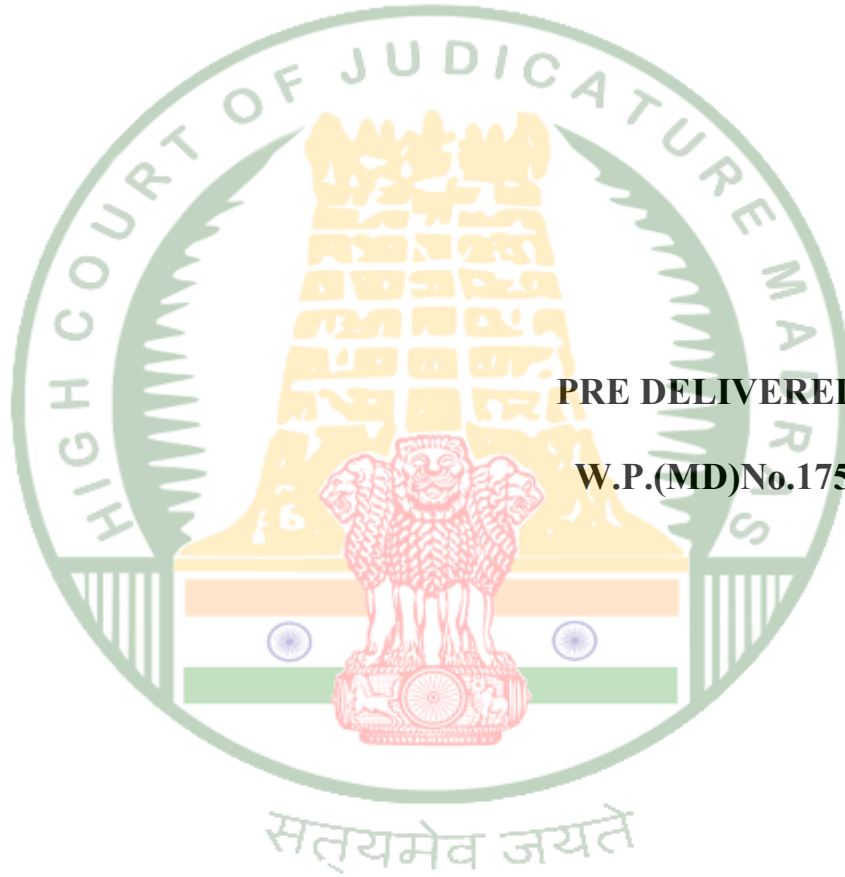


WEB COPY

W.P.(MD)No.17504 of 2014

RMT.TEEKAA RAMAN, J.

PJL



**PRE DELIVERED ORDER
MADE IN
W.P.(MD)No.17504 of 2014**

WEB COPY

09.09.2020