

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25<sup>TH</sup> DAY OF MAY, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.9849 OF 2021

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**BETWEEN:**

1. SRI ANAND C., @ ANKU GOWDA  
S/O LATE CHAKKALURU CHENNAPPA  
AGED ABOUT 76 YEARS  
OCCUPATION BUSINESS.

2. SMT. VARALAKSHMI  
W/O ANAND C., @ ANKU GOWDA  
AGED ABOUT 49 YEARS  
OCCUPATION HOUSEWIFE.

BOTH ARE PRESENTLY  
RESIDING AT NO.2250/16  
3<sup>RD</sup> MAIN, WARD NO.34  
R.P.C LAYOUT, HAMPINAGAR  
BENGALURU - 560 040.

3. SRI SYED ALAM ANSAR  
S/O LATE YAKUB MIYAN  
AGED ABOUT 72 YEARS  
OCCUPATION BUSINESS  
PRESENTLY RESIDING AT NO.1869  
OPPOSITE OLD DAIRA SIDOOL  
B.M.ROAD, CHENNAPATTANA,  
RAMANAGARA DISTRICT - 562 160.

4. SRI VISHAKANTAIAH  
S/O LATE NANJUNDE GOWDA

AGED ABOUT 78 YEARS  
OCCUPATION FARMER.

5. SMT.JAYAMMA  
W/O VISHAKANTIAH  
AGED ABOUT 65 YEARS  
OCCUPATION HOUSEWIFE.
6. SRI SHANKAR (WRONGLY MENTIONED)  
ORIGINAL NAME CHANDRASHEKAR  
S/O VISHAKANTIAH  
AGED ABOUT 45 YEARS  
OCCUPATION BUSINESS.

ALL ARE RESIDING AT NO.13  
CHIKKANNADODDI VILLAGE  
CHENNAPATNA TALUK  
ABBUR, CHENNAPATTANA,  
RAMANAGARA DISTRICT – 562 108.

... PETITIONERS

(BY SRI RAVINDRANATH K., ADVOCATE)

**AND:**

SMT. CHANDRAMMA  
W/O SRI ANAND C.,  
AGED ABOUT 69 YEARS  
OCCUPATION HOUSE WIFE  
RESIDING AT NO.2250  
3<sup>RD</sup> MAIN, 2<sup>ND</sup> STAGE  
BEHIND VIJAYANAGAR CLUB,  
VIJAYANAGAR, BENGALURU – 560 040.

... RESPONDENT

(BY SRI S.G.RAJENDRA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE COMPLAINT FILED BY THE RESPONDENT BEFORE THE PRINCIPAL CIVIL JUDGE AND JMFC IN PCR.NO.151/2018 AND ALSO QUASH THE C.C.NO.115/2021 IN THE FILE OF THE PRL. CIVIL JUDGE AND JMFC, CHANNAPATTANA.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.03.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

Petitioners are before this Court calling in question proceedings in C.C.No.115 of 2021 pending before the Principal Civil Judge & JMFC, Channapatna, arising out of PCR No.151 of 2018, initiated for offences punishable under Sections 494 and 109 of IPC r/w. Section 34 of the IPC.

2. Heard Sri Ravindranath K., learned counsel for the petitioners and Sri S.G.Rajendra Reddy, learned counsel for the respondent.

3. Brief facts leading to the filing of the present petition, as borne out from the pleadings, are as follows:-

Petitioner No.1 presently aged 76 years is the husband of the complainant/wife/respondent who is aged 69 years.

Petitioner Nos.2 to 6 are all either family members, close relatives or friends of the 1<sup>st</sup> petitioner/husband. Marriage between the 1<sup>st</sup> petitioner and the respondent takes place on 02.05.1968. It is stated that from the wedlock of the 1<sup>st</sup> petitioner and the respondent three children were born. Out of the three, one is no more and two others who are daughters are residing in their respective matrimonial houses. It is the averment in the petition that in the year 1972-73, the 1<sup>st</sup> petitioner with the consent of the respondent married one Smt. Savitramma who is the sister of the respondent/complainant. From that wedlock, the 1<sup>st</sup> petitioner and Smt. Savitramma have two children – one is 45 years old and the other is 43 years old.

4. The 1<sup>st</sup> petitioner again gets married in the year 1993 with the 2<sup>nd</sup> petitioner/Smt. Varalakshmi. Again the averment is that, it was with the permission and consent of the 1<sup>st</sup> and 2<sup>nd</sup> wives. It is also stated that the properties of the 1<sup>st</sup> petitioner were equally divided amongst all of them. Therefore, it is the contention that the 1<sup>st</sup> wife - Smt. Chandramma/respondent

was aware of the marriage of the 1<sup>st</sup> petitioner with Smt. Savitramma, the second marriage and both Smt. Savitramma and the respondent were aware of the marriage of the 1<sup>st</sup> petitioner with the 2<sup>nd</sup> petitioner i.e., the third marriage. It is also stated that all of them lived together peacefully.

5. In the year 2008, it appears that the 1<sup>st</sup> petitioner constructed a residential house in which the 1<sup>st</sup> and the 2<sup>nd</sup> petitioners performed all the rituals in the presence of all the members of the family and the wives. On 12-01-2015, it is averred that a gift deed was registered by the 1<sup>st</sup> petitioner in favour of the 2<sup>nd</sup> petitioner of a particular property. Likewise, another property was also gifted to the 2<sup>nd</sup> petitioner. The gifts made by the 1<sup>st</sup> petitioner in favour of the 2<sup>nd</sup> petitioner did not go well with the respondent/wife referred to as the first wife. On 07-07-2017, the respondent causes a legal notice upon the 1<sup>st</sup> and 2<sup>nd</sup> petitioners contending that the 1<sup>st</sup> and the 2<sup>nd</sup> petitioners have got married on suppression of earlier marriage that took place between the respondent and the 1<sup>st</sup> petitioner.

The 1<sup>st</sup> and the 2<sup>nd</sup> petitioners also replied to the notice. Another civil proceeding is instituted by the daughters of the 1<sup>st</sup> petitioner and the respondent in O.S.No.91 of 2017 claiming partition and separate possession of various properties belonging to the 1<sup>st</sup> petitioner. Both the 1<sup>st</sup> and the 2<sup>nd</sup> petitioners are defendants in the said suit.

6. Things standing thus, the respondent files a private complaint invoking Section 200 of the Cr.P.C. against the petitioners herein alleging offences punishable under Section 494 of the IPC for bigamy, Section 109 of the IPC for abatement and Section 34 of the IPC in PCR No.151 of 2018. The respondent also files an application under Section 12 of the Domestic Violence Act, 2015 on the very next day of registration of the aforesaid private complaint in Criminal Miscellaneous No.138 of 2018. The other petitioners appear to have given evidence in Criminal Miscellaneous No.138 of 2018. Later, the learned Magistrate in P.C.R.No.151 of 2018 issued summons to the petitioners on 08-02-2021 after registering the crime in

C.C.No.115 of 2021 in terms of Section 204 of the Cr.P.C., which was after an order taking cognizance of the offences against the petitioners. It is this act of the learned Magistrate taking cognizance that is called in question in the subject petition.

7. The learned counsel appearing for the petitioners would vehemently argue and contend that the allegation of polygamy against the 1<sup>st</sup> petitioner is unfounded as the complainant/respondent was very well aware of the relationships of the 1<sup>st</sup> petitioner as with her consent the 1<sup>st</sup> petitioner married one Smt. Savitramma, sister of the complainant and with the consent of both the sisters married the 2<sup>nd</sup> petitioner. It is his submission that all these events have happened first in the year 1972-73 and later, in the year 1993-94. The complaint is registered in the year 2018, after about 25 years of the marriage with the 2<sup>nd</sup> petitioner and after about 45 years of the complainant being aware of the 2<sup>nd</sup> marriage. In all, the submission of the learned counsel is that, the dispute with regard to distribution of properties is racked up by registering a

private complaint 25 years after the marriage of the 2<sup>nd</sup> petitioner.

8. On other hand, the learned counsel appearing for the respondent would vehemently refute the submissions to contend that the complainant was not even aware of the marriage of the 1<sup>st</sup> petitioner with the 2<sup>nd</sup> petitioner. Suppressing the fact that the 1<sup>st</sup> petitioner is already married, he married the 2<sup>nd</sup> petitioner which would definitely amount to bigamy and there can be no delay in cases of bigamy is his emphatic submission.

9. I have given my anxious consideration to the submissions made by the respective learned counsel appearing for the parties and perused the material on record.

10. The afore-narrated graphic details of dates and events are not disputed and are therefore not reiterated. The 3<sup>rd</sup> marriage of the 1<sup>st</sup> petitioner is admitted even in the petition. Therefore, the only issue that false for my consideration is,



***“Whether the offence of bigamy is a continuing offence or the proceedings instituted for offence punishable for bigamy under Section 494 of the Cr.P.C. can be obliterated on the ground of delay?”***

11. A few dates that would be needed for the said consideration are that, the marriage of the 1<sup>st</sup> petitioner with the complainant is on 02-05-1968. Marriage with the sister of the complainant is in the year 1972-73. From the wedlock, the 1<sup>st</sup> petitioner with the complainant or her sister has three and two children respectively, who are all aged more than 45 years. During the subsistence of these two marriages, the 1<sup>st</sup> petitioner marries the 2<sup>nd</sup> petitioner on 12-04-1993. Therefore, the 1<sup>st</sup> petitioner has admitted that he has contracted three marriages. The complainant being aware of subsequent marriages are not would be legally immaterial. The Apex Court in the case of **STATE OF BIHAR v. DEOKARAN NENSHI AND ANOTHER<sup>1</sup>**, has interpreted the phrase ‘*continuing offence*’ and holds as follows:-

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<sup>1</sup> (1972) 2 SCC 890

*“5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arise out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.”*

The Apex Court holds that a continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. Following the aforesaid judgment, a learned single Judge of the High Court of Gujarat in the case of **JAFAR ABBAS RASOOLMOHAMMAD MERCHANT v. STATE OF GUJARAT**<sup>2</sup>, holds that bigamy is a continuing offence. The learned Judge has held as follows:

*“56. In interpreting Section 494 of the IPC, one should look into the purpose of enactment and also to the mischief to be prevented. The object of enacting Section 494 of the Penal Code, 1860, to my mind, clearly was to*

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<sup>2</sup> (2015) SCC Online Gujarat 5552

*punish persons, who in defiance of the law applicable to them in matters of marriage and divorce, etc., take a second wife during the existence of the first, but for the Personal Law of the Muslim, as discussed above, the applicant would be guilty of the offence of bigamy, if ultimately proved, on the basis of the evidence recorded in the course of the trial. He is able to get away with which by misinterpreting and misusing to his advantage, the message of the holy prophet Mohmmad, which is reflected in the holy 'Quran'. The 'Quran' does not say that a Muslim can treat his wife cruelly, drive her out and without dissolution the first marriage in accordance with law, he can marry for the second time and upto four times. The message of the holy prophet is loud and clear. Everyone knows about it, but still do not want to follow it.*

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**77.** *In the case of State of Bihar v. Deokaran Nenshi, reported in (1972) 2 SCC 890: (AIR 1973 SC 908), it was observed by the Apex Court that a continuing offence is one which is susceptible of continuance and is distinguished from the one which is committed once and for all. It is one of those offences which arise out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."*

Several other High Courts have also taken the similar view that bigamy is a continuing offence. If admitted facts as deliberated

hereinabove are taken note of, it cannot be in doubt that the 1<sup>st</sup> petitioner has contracted second and even third marriages during the subsistence of the 1<sup>st</sup> marriage with the complainant. In the teeth of the admitted fact, no further interpretation need be given, as even to day, the 1<sup>st</sup> petitioner admits that he is the husband of three women. Therefore, he is in the web of the offence punishable under Section 494 of the IPC. The proceedings against the 1<sup>st</sup> and 2<sup>nd</sup> petitioners cannot be quashed as the offence is admitted by the 1<sup>st</sup> petitioner in the petition. It being with the consent of the 1<sup>st</sup> wife or with the consent of the 1<sup>st</sup> and 2<sup>nd</sup> wives for the third time would become immaterial for consideration of offence of bigamy. In the teeth of the admitted facts of the petitioner marrying thrice and its subsistence even as on day, the plea of delay in registration of the crime would pale into insignificance, as bigamy in the case at hand is a continuing offence. The 1<sup>st</sup> petitioner, the 2<sup>nd</sup> petitioner and the other two wives of the 1<sup>st</sup> petitioner have all married the 1<sup>st</sup> petitioner during the subsistence of each others marriage and being fully aware of the preceding marriage.

Therefore, the proceedings will have to be continued against them.

12. Insofar as the case of petitioner Nos.3, 4, 5 and 6 is concerned, it will have to be viewed with a different lens. The act of bigamy generally is a *triangle* involving the husband, the 1<sup>st</sup> wife and the 2<sup>nd</sup> wife. This is a peculiar case where it is a *quadrangle*, though the 2<sup>nd</sup> wife is not before the Court. Therefore, the 1<sup>st</sup> petitioner, 2<sup>nd</sup> petitioner and the complainant will have to resolve the issue amongst themselves. Petitioner Nos.3, 4, 5, and 6 who are other family members or friends of the 1<sup>st</sup> petitioner cannot be hauled into these proceedings unless there are instances to demonstrate that they were responsible for the commission of second marriage or even the third marriage. That is not the averment in the complaint. The 2<sup>nd</sup> marriage has taken place in the year 1973 and the third marriage in the year 1993. Dragging all other members of the family and friends into the web of these proceedings *sans* countenance.

13. Therefore, criminal proceedings against petitioner Nos.3, 4, 5 and 6 require to be obliterated and the charge sheet against petitioner Nos.1 and 2 is required to be sustained only for the offence under Section 494 of the IPC and not under Section 109 of IPC.

14. It is for the *protagonists* in the *quadrangle* to resolve the issue amongst themselves and not drag other persons into these proceedings. If the proceedings against other petitioners are not quashed, it would become an abuse of the process of law, result in miscarriage of justice and quadruplet harassment to petitioner Nos.3 to 6.

15. For the aforesaid reasons, I pass the following:

**ORDER**

- i. The Criminal Petition is allowed in part.
- ii. Criminal Petition insofar as it concerns petitioner Nos.1 and 2 stands dismissed.

- iii. Criminal petition insofar as petitioner Nos.3, 4, 5 and 6 is concerned is allowed. Proceedings against them stand quashed.
- iv. It is made clear that the observations made in the course of this order are only for the purpose of consideration of the case of the petitioners either to sustain or to obliterate the proceedings. The same would not influence or bind further proceedings against petitioner Nos.1 and 2 or any other accused or any other proceedings pending before the authorities.

**Sd/-  
JUDGE**

nvj  
CT:MJ