

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

Crl.O.P.No.23519 of 2009

and

M.P.No.1 of 2009

1.S.Loganathan

2.P.Gnanasekaran

3.N.Sivakumar

...Petitioners/Accused

Vs.

Gomathy

...Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records in C.C.No.128 of 2003 on the file of the Judicial Magistrate-III, Erode and quash the same.

For Petitioners : Mr.C. Prakasam
For Respondent : Mr.M. Guruprasad

ORDER

This application is arising out of a private complaint instituted by the respondent / complainant as against the petitioners / accused for the commission of offence punishable under Sections 494 r/w 109 IPC.

2.According to the petitioners, the proceedings in CC No.128 of 2003 is pending right from the year 2003. The petitioners / accused along with other co-accused had already moved a quash petition before this Court in Crl.O.P.No.12884 of 2003 and the same was dismissed by this Court on 27.06.2003, with a direction to dispose of the said CC within a period of six months from the date of receipt of a copy of the order. Though the said order came to be passed as early as on 27.06.2003, there has been no progress in the trial. Now, the petitioners / accused herein, have once again filed this quash petition, on the ground that the proceedings in CC No.128 of 2003 as against one L.Rathi, who was accused No.13, was quashed by this Court in Crl.O.P.No.17634 of 2004 by order dated 28.01.2008 and therefore, prays for allowing this petition.

3.Per contra, the learned counsel appearing for the respondent / complainant would submit that the petitioners /

accused had earlier filed an application in CrI.O.P.No.12884 of 2003 and the same was dismissed as early as on 20.06.2003, without accepting any of the grounds raised therein and the present petition to quash the said proceedings is not at all maintainable and hence, prays for dismissal of this petition.

4. According to the defacto complainant, nearly thirteen persons have been arrayed as accused and the petitioners / accused have filed separate applications before the trial Court only in order to drag on the proceedings for years together and therefore, the delay in the proceedings is not on the part of the complainant, but only on the part of the accused. With regard to the quashing of the complaint as against the accused No.13, the learned counsel appearing for the respondent / complainant would submit that as per Section 106 of the Indian Evidence Act, the fact especially lies within the knowledge of the accused. The accused have not established that they were not aware of the subsistence of the first marriage and therefore, this is a matter for trial and hence, prays for dismissal of this quash petition.

5. In the light of the order dated 28.01.2008 passed by this Court as against the accused No.13, who was also a similarly placed person as that of the petitioners, except the lighting of incense stick and blessing the couple, there is no overt act against these petitioners. Hence, this Court is of the view that the complaint as against these petitioners is liable to be quashed.

6. In the result, the criminal original petition is allowed and the proceedings in C.C.No.128 of 2003 on the file of the Judicial Magistrate-III, Erode is quashed as against these petitioners alone. However, considering the facts and circumstances of the case and the fact that the complaint is of the year 2003 and the matter has been dragged on at the instance of the accused by filing one petition or another and is pending for over a period of 15 years, the learned Judicial Magistrate-III, Erode, is directed to expedite the trial and conclude the trial within a period of three months from the date of the receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

-Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

msm/gk

To

1.The Judicial Magistrate-III,
Erode.

2.The Public Prosecutor, High Court, Madras.

+1 cc to Mr.C.Prakasam advocate sr84341

+1 cc to Mr.M.Guruprasad Advocate sr84530

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