

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 25.01.2018
DELIVERED ON : 22.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CrI.R.C.No.11 of 2018
and
CrI.M.P.Nos.42 and 43 of 2018

1.N.Sivakumar
2.K.Ravichandran
3.K.Vijayakumar
4.S.Senthilkumar
5.Idaiyammal
6.K.Gopal
7.P.Ramesh
8.P.Kulanthaisamy
9.Devi

... Petitioners

Vs

Gomathi

... Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, to set aside the order dated 10.11.2017 in CMP.No.4446 of 2017 on the file of Judicial Magistrate No.3, Erode.

For Petitioners: Mr.V.P.K.Gowtham

For Respondent : Mr.Guruprasad

JUDGMENT

This Criminal Revision Petition is preferred by the petitioners/accused Nos.5, 6, 18 to 22, 24 and 25 against the order passed by the learned Judicial Magistrate No.3, Erode in C.M.P.No.4446 of 2017 dated 10.11.2017 wherein the learned trial judge dismissed the discharge petition filed under section 245 of Cr.P.C.

2.Brief case of the petitioners/accused:

The petitioners/accused A5,6,18 to 22,24 and 25 submits that respondent filed private complaint against them under section 494 read with 109 of IPC . The case of the respondent is that 1st accused namely one Mr.Durairaj

had married respondent herein on 4.6.1987. Thereafter some dispute arose between the respondent and first accused and due to the same, he filed H.M.O.P.No.34 of 1999 seeking divorce against respondent herein. Subsequently the said H.M.O.P.No.34 of 1999 was set ex-parte on 26.6.2000. Moreover respondent herein had filed I.A.No. 15 of 2001 seeking to set aside ex-party order and same was allowed on 31.7.2001, thereafter Mr.Durairaj had not appeared before Court and the said H.M.O.P. was dismissed for default. Being so, Durairaj married 4th accused namely padma on 12.9.2002 and respondent herein had filed private complaint against 30 persons under section 494 r/w 109 of IPC. The main allegation against these petitioners is that they were present at the time of marriage and blessed the couple by putting turmeric rice on Durairaj and Padma. The learned trial Court issued summons to the petitioners and the case is pending before the trial Court. The petitioners filed petition under section 245 of Cr.P.C. before the trial Court for discharge.

3.The learned trial Court after appreciating the contentions raised by both parties dismissed the discharge petition. Aggrieved over the same, the present criminal revision is filed.

4.The learned counsel for the petitioners submits that the learned magistrate failed to consider that the respondent had not made out any prima facie case and not produced any evidence in support of her case.

5.The learned counsel for the petitioners submits that the learned magistrate failed to consider that except wording in complaint that petitioners had present in the marriage held between A1 and A4 and blessed by putting turmeric rice and except that there is no other allegation against the petitioners.

6.The learned counsel for the petitioners submits that the learned magistrate failed to consider that similarly placed petitioner No.13 had filed quash petition before this Court and the same was quashed by this Court and observed following the decision reported in 1992 SCC (Cr1) 636 Para 9 wherein it has been held as follows:

"It was held penal code 1860 sec. 494 and 109 Abetment of big may-by mere presence or otherwise the other accused cannot be held to have

facilitated the solemnization of the second marriage with the knowledge that the earlier marriage was subsisting - so the allegation imputing them with guilty knowledge unsupported by other material would not justify the continuance of the proceedings against them."

7.The learned counsel for the petitioners cited the following decisions in support of his submissions:

- 1) CDJ 1992 SC 141 (Chand Dhawan v. Jawahar Lal)
- 2) CrI.O.P.17634 of 2004 dated 21.08.2008 (L.Pathi v. Gomathy)

8.The learned counsel for the respondent supported the order passed by the learned trial Court and seeks for dismissal of revision.

9.I have heard Mr.V.P.K.Gowtham, learned counsel for the petitioners and Mr.Guruprasad, learned counsel for the respondent and perused the entire materials available on record.

10.It is seen from the complaint that the respondent arrayed 30 persons as accused and they were facing trial for the alleged offences under section 494 r/w 109 of IPC.

11.It is pointed out by the learned counsel for the petitioner that there is no specific allegation against the petitioner herein to constitute the alleged offence under Section 494 r/w 109 of IPC. The only averment made by the respondent is that they blessed the couple by putting turmeric rice. The allegation leveled in the complaint against the petitioners is vague. It cannot be assumed that they had by their presence or otherwise facilitated the solemnization of a second marriage with the knowledge that the earlier marriage was subsisting. In this background the allegations made against the petitioners imputing them with guilty knowledge un-supported by other material would not justify the prima facie case.

12.This Court in CrI.O.P.No.17634 of 2004 filed by A13, quashed the proceedings initiated against him in C.C.No.128 of 2003. The discussion made by the learned brother judge in para's 6 and 7 squarely applies to the petitioners also.

13.In the result, this criminal revision case is allowed and the order passed by the learned Judicial Magistrate No.III, Erode in Cr.M.P.No.4446 of 2017 dated 10.11.2017 is set aside. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vs
To

1.The Judicial Magistrate No.III,
Erode.

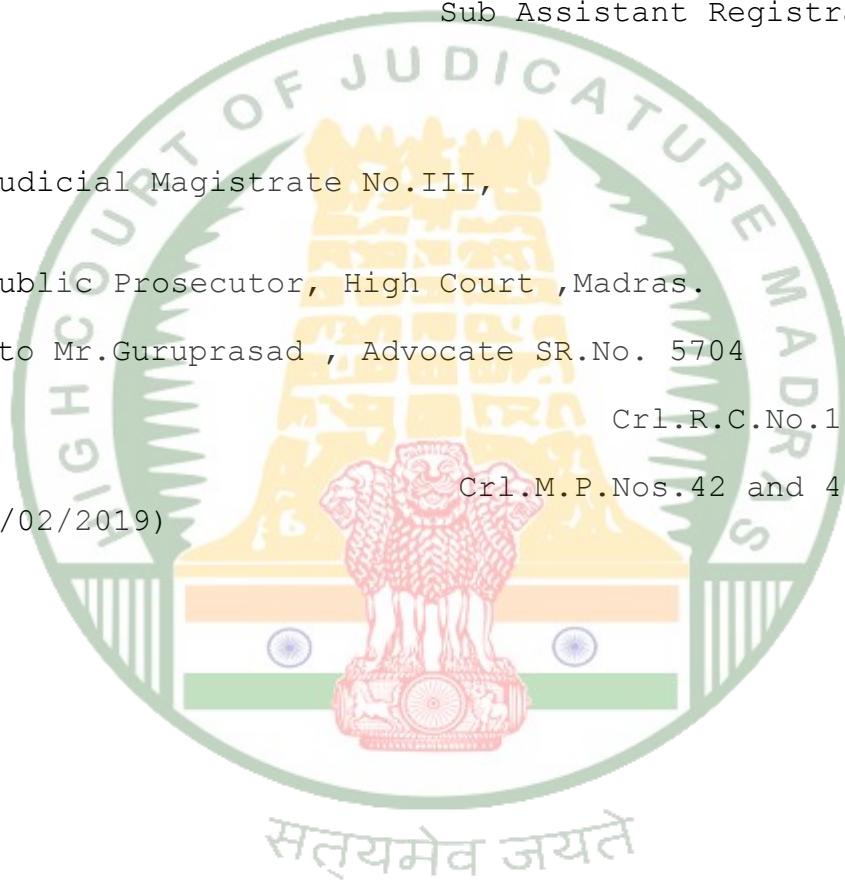
2.The Public Prosecutor, High Court ,Madras.

+1cc to Mr.Guruprasad , Advocate SR.No. 5704

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A.SK(19/02/2019)



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