

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NO.337 OF 2020
&
CRL.M.P.NO.2569 & 2570 OF 2020

Subramaniyan

... Petitioner/
Accused

Vs.

Revathi

... Respondent/
Complaint

PRAYER:

Criminal Revision Case filed under 397 r/w 401 of Cr.P.C. to set aside the order passed in C.C.No.37 of 2017, dated 13.01.2020, passed by the learned Judicial Magistrate, Thittagudi.

For Petitioner : Mr.M.Velmurugan

For Respondent : Ms.Malini George

O R D E R

This petition has been filed by the petitioner/first accused to quash the charge framed against him by the learned Judicial Magistrate, Thittagudi, in C.C.No.37 of 2017, dated 13.01.2020.

2. It appears from the facts of the case that the respondent herein/wife filed the private complaint against the accused 1 to 5, stating that while her marriage was subsisting with the petitioner herein/first accused, the first accused married the second accused. The allegation against the the accused 3 to 5, who are none other than the relatives of the first accused, is that they helped in conducting the second marriage. The learned Judicial Magistrate, Thittagudi, after enquiry, framed the charge against the petitioner herein/first accused and the second accused for the offence under Section 494 of IPC; the accused 3 & 4 were charged for the offence under Section 109 of IPC; since the fifth accused was insane, the learned Judicial

Magistrate, acquitted him. Challenging the charge framed by the learned Magistrate, Thittakudi, against the first accused under Section 494 of IPC, the present revision has been filed by the petitioner/husband.

3. The learned counsel for the petitioner would submit that the petitioner/first accused has not conducted the second marriage, as contended by the respondent/wife and the form of marriage with the second wife was not proved by the material evidence, like name of the witness, time and date of solemnization of such second marriage and in the absence of such vital allegation in the complaint and in sworn statement, the learned Magistrate ought not to have taken the complaint on file and discharged the petitioner, as no offence has been made out under Section 494 of IPC. It is further contended that according to the respondent/wife, the alleged second marriage is said to have conducted at Katpadi, which was also registered before the Sub Registrar Office, Katpadi, while being so, the respondent/wife has filed the private complaint before the learned Judicial Magistrate, Thittagudi, and as such, the learned Judicial Magistrate, Thittagudi ought to have dismissed the petition on the ground of lack of jurisdiction, however, the learned Judicial Magistrate, framed the charge under Section 494 of IPC, when there was no evidence to substantiate the same, and hence, prayed for setting aside the charge framed against the first accused/petitioner by the learned Judicial Magistrate.

4. Per contra, the learned counsel for the respondent/wife would submit that after the marriage, the petitioner/first accused and the respondent had been working in Tholudur Dr.Navalur Nedunchezhiyan College, Thittakudi College, and due to the wedlock, a girl baby was born to them and subsequently, due to matrimonial dispute, the petitioner/first accused deserted the respondent/wife and married a lady as a second wife, and during pregnancy, the second wife and the child died and thereafter, the petitioner/first accused married Prabha, the second accused, as a third wife, and thereby committed the offence under Section 494 of IPC. It is also further contended that since the accused have adopted the dilatory tactics, the quash petition filed by the second and third accused was dismissed by this Court, by an order dated 21.01.2021 in CrI.O.P.No.31047 of 2019, by observing that the learned Judicial Magistrate shall dispose the case within a period of three months, by taking a trial on day to day basis, however, the petitioner/first accused did not co-operate for proceeding the case further and only in order to protract the proceeding, he has filed this petition, and hence, there is no merit in the revision and prays for dismissal of the Revision.

5. Heard the learned counsel on either side and perused the materials available on record.

6. Admittedly, the respondent/wife filed a private complaint under Section 200 of Cr.P.C. before the learned Magistrate, Thittakudi, by contending that while her marriage was subsisting with the petitioner herein/first accused, the first accused married the second accused. The learned Judicial Magistrate, Thittagudi, after taking cognizance of offences, framed charges against the accused 1 to 4. It is settled principles of law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. Since it is a private complaint filed under Section 200 of Cr.P.C., the Court has to see whether any prima facie allegation or averment made in the complaint and therefore, the defence taken by the petitioner/first accused need not be looked into at this stage. Further, in this case, the private complaint reveals that there is prima facie allegation against the petitioner/first accused.

7. It is also to be noted that in the year 2019 itself, the respondent/wife has approached this Court for a direction to the learned Judicial Magistrate, Thittagudi, to dispose of the case in C.C.No.37 of 2017, within a time frame, and this Court also by an order dated 27.06.2019, directed the learned Magistrate, Thittagudi, to dispose the case within a period of three months and also directed to file a report before the Court, after completion of the proceedings. Subsequently, the second and third accused have approached this Court in CrI.O.P.No.31047 of 2019, seeking to quash C.C.No.37 of 2019. This Court, by an order dated 21.01.2021, observed as follows:-

"2. The grounds that have been raised by the learned counsel for the petitioners is purely factual in nature and it is seen from records that the petitioners had already filed a discharge petition and the same was dismissed by an order dated 14.10.2019. Thereafter, the present quash petition has been filed before this Court. Even though a quash petition can be maintained, even after the dismissal of the discharge petition, considering the facts and circumstances of the case, this court is not inclined to entertain this quash petition, since it involves appreciation of facts and this Court cannot go into the same in exercise of its jurisdiction under Section 482 of Cr.P.C. It is left open to the petitioners to raise these grounds before the Court below and the Court below shall consider the same on its own merits and in accordance with law.

3.

4. This Criminal Original Petition is disposed of with a direction to the Court below to complete the proceedings, within a period of two months from the date of receipt of a copy of this order. The trial shall be conducted on a day to day basis in accordance with the guidelines given by Hon-ble Supreme Court reported in Vinod Kumar Vs State of Punjab [2015 (1) MLJ (Cr1) 288 SC]. If the petitioners adopts any dilatory tactics, it is open to the trial Court to insist upon the presence of the petitioners and remand them to custody as per the judgment of the Hon-ble Supreme Court in STATE OF UTTAR PRADESH VS. SHAMBHU NATH SINGH (JT 2001 (4) SC 3191). Consequently, connected miscellaneous petitions are also closed."

A bare perusal of the above order, it could be seen that, initially, the accused have filed discharge petition and after the dismissal of the discharge petition, subsequently, the second and third accused filed the quash petition, and thereafter, now the present petition has been filed to set aside the order of charge framed by the learned Magistrate, by the petitioner/first accused and hence, this Court is of the view that it is only dilatory tactics that is being adopted by the accused. Therefore, this Court is of the view that since the accused have adopted the dilatory tactics and protracted the case one reason or another from the year 2017, this Court directs the learned Judicial Magistrate, Thittagudi, to conduct the trial on a day to day basis and dispose the case in C.C.No.37 of 2017, within a period of three months from the date of receipt of a copy of this order and file compliance report before this Court on 30.06.2021, without fail.

8. With the above observation, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

r n s

To

1. The Judicial Magistrate,
Thittagudi.
2. Do-Thro The Chief Judicial Magistrate,
Cuddalore
3. The Principal District Judge,
Vellore.

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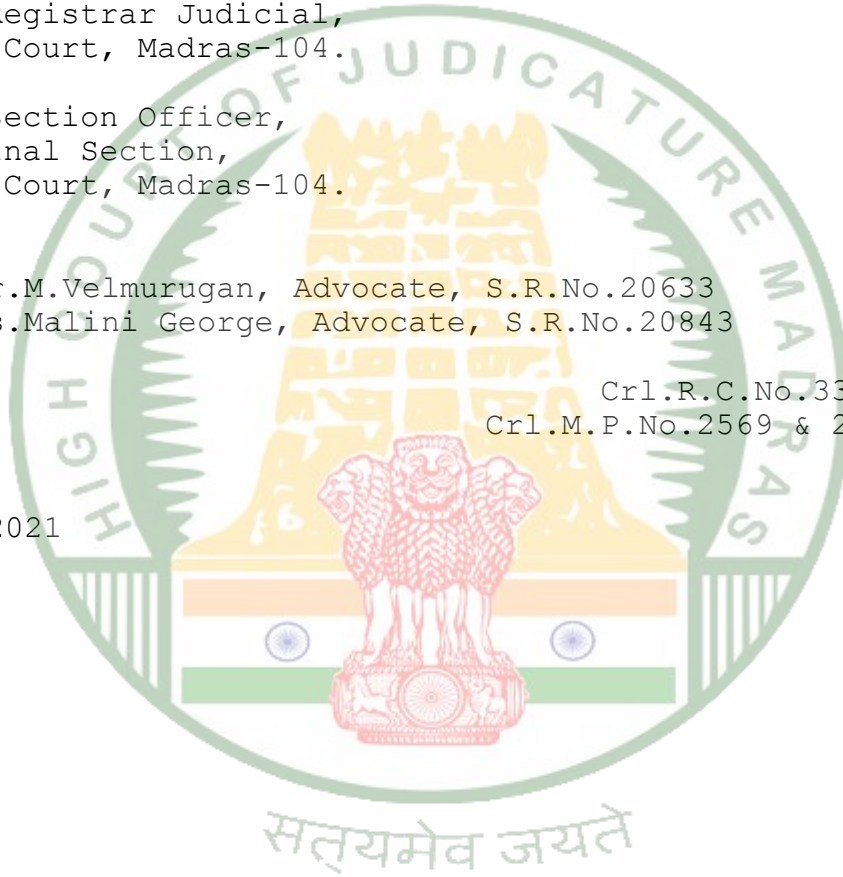
1. The Registrar Judicial,
High Court, Madras-104.
2. The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.M.Velmurugan, Advocate, S.R.No.20633

+3cc to Ms.Malini George, Advocate, S.R.No.20843

CrI.R.C.No.337 of 2020 &
CrI.M.P.No.2569 & 2570 of 2020

PPA (CO)
CS/31/03/2021



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