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.Crl.RC.No.1460 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 01.09.2023

Delivered On : 09.08.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.RC.No.1460 of 2019
and Crl.M.P.No.18686 of 2019

Jakir Hussain

...Petitioner/Petitioner/1st Respondent

Vs.

Kalitha Parveen

... Respondent/Respondent/Petitioner

PRAYER: Criminal Revision filed under Section 397 r/w. 401 of Cr.P.C., to set aside the order passed in CMP.No.2006 of 2018 in DVC.No.16 of 2017 dated 04.03.2019 on the file of the learned Judicial Magistrate No.II, Tiruppur.

For Appellant : Mr.Ma.P.Thangavel

For Respondent : Mr.G.Vigneshwar for
Mr.V.Nicholas



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ORDER

This Criminal Revision has been filed to set aside the order passed by the learned Judicial Magistrate No.II, Tiruppur in CMP.No.2006 of 2018 in DVC.No.16 of 2017 dated 04.03.2019.

2. The learned Counsel for the Revision Petitioner submitted that the Respondent/wife had filed D.V.C.No.16 of 2017 on the file of the learned Judicial Magistrate No.II, Tiruppur, in which the address of the Revision Petitioner herein as the 1 st Respondent in D.V.C was not clearly stated and notice was served. The learned Judicial Magistrate No.II, Tiruppur, had proceeded with the D.V.C. as though the Revision Petitioner herein as 1 st Respondent in D.V.C evaded the notice. The notice sent through the Court had been returned with the endorsement “intimation delivered”. Therefore, the Court was under the impression that the Petitioner had wantonly evaded the service and passed ex parte order in D.V.C.No.16 of 2017 dated 13.02.2018.



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3. It is the submission of the learned Counsel for the Revision Petitioner that the Revision Petitioner had filed suit in O.S.No.13 of 2012 seeking declaration that the Respondent herein as Defendant in the suit, who is not the wife of the Plaintiff in O.S.No.13 of 2012, the Respondent herein as Defendant in the suit in O.S.No.13 of 2012 on the file of the learned District Munsif, Nilakottai, Dindigul District, had engaged a Counsel and agitated her rights. After contesting the suit, the learned District Munsif, Nilakottai, Dindigul District, by judgment dated 13.08.2013, decreed the suit, granting the relief of declaration that the Defendant in the suit is not the wife of the Plaintiff and also granted injunction restraining the Respondent from interfering with the rights of the Plaintiff in the place of business and place of residence.

4. Aggrieved by the same, the wife/Defendant in the suit in O.S.No.13 of 2012 filed the Appeal in A.S.No.10 of 2014 before the learned Additional Sub-Judge, Dindigul. The learned Additional Sub-Judge, Dindigul, by judgment dated 22.09.2017 in A.S.No.10 of 2014,



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had partly allowed the Appeal, thereby dismissing the Appeal with regard to the declaration already granted by the learned District Munsif, Nilakottai, Dindigul District, and vacating the injunction regarding permanent injunction against law enforcing authorities.

5. While so, it is the contention of the learned Counsel for the Revision Petitioner that the wife had contracted a second marriage on 02.05.2016, and the certificate of the second marriage had been enclosed in this Revision Case, obtained from the local Jamath, Tiruppur, wherein the marriage was performed. The Revision Petitioner as 1st Respondent in D.V.C is prejudiced by the order passed by the learned Judicial Magistrate No.II, Tiruppur. The Petition to set aside the ex parte order was dismissed by the learned Judicial Magistrate No.II, Tiruppur, as per the order in C.M.P.No.2006 of 2018 in D.V.C.No.16 of 2017 dated 04.03.2019. Aggrieved by the same, the Revision Petitioner had approached this Court by filing this Criminal Revision Case.

6. The learned Counsel for the Respondent submitted that nowhere



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in the affidavit filed by the Revision Petitioner as Respondent in the Domestic Violence Case No. 16 of 2017. He had stated that his Counsel was taking care of the case. The learned Counsel for the Respondent invited the attention of this Court to the affidavit filed by the Petitioner in CMP.No.2006 of 2018 in D.V.C.No.16 of 2017. The learned Counsel for the Respondent submitted that despite having knowledge, the husband as a Respondent in the Domestic Violence Case No.16 of 2017, did not take care to attend the Court of the learned Judicial Magistrate – II, Tiruppur. The learned Counsel for the Respondent invited the attention of this Court to the order of the learned Judicial Magistrate No.II, Tiruppur in Paragraph No.4. The relevant portion reads as follows:

“வழக்குகளின் அழைப்பாணைகளை தனது வழக்கறிஞரிடம் ஒப்படைத்துவிட்டதாக முதல் எதிர்மனுதாரர் கூறியுள்ள போதிலும், சுமார் 3 வருடங்களுக்கு மேலாக அந்த வழக்குகள் என்ன ஆனது என்று வழக்கறிஞரிடம் முதல் எதிர்மனுதாரர் கேட்டு தெரிந்து கொள்ளவில்லை என்பது ஏற்படையதாக அமையவில்லை. மேலும், முதல் எதிர்மனுதாரர் தனது சிறுநீரக வியாதிக்கு சித்தா சிகிச்சை எடுத்துக் கொண்டதனை மெய்ப்பிப்பதற்காக எந்த ஒரு ஆவணமும் நீதிமன்றத்தில் சாட்சியமாக இந்நீதிமன்றத்தில் முன்னிலைப்படுத்தவில்லை. சித்தா சிகிச்சை அளித்த மருத்துவரையும் சாட்சியாக அழைத்து விசாரணை செய்யவில்லை. 2015ம் ஆண்டு முதல் மாதத்தில் சிறுநீரக பிரச்சனை காரணமாக சித்தா சிகிச்சை எடுத்துக் கொண்டதாக முதல் எதிர்மனுதாரர் குறிப்பிட்டு இருந்த போதிலும், அதன் பின்னிட்டு, இவ்வழக்கில் 13.02.2018ம் தேதியில் உத்தரவு பிறப்பிக்கும் வரையில், இடைப்பட்ட 3



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வருட காலம் எதனால், இந்நீதிமன்றத்தில் முன்னிலையாகவில்லை என்பதற்கான காரணத்தினை முதல் எதிர்மனுதாரர் இந்நீதிமன்றத்தில் தெரிவித்திருக்கவில்லை.”

7. It is the contention of the learned Counsel for the Respondent that as per Section 29 of the Domestic Violence Act, Sessions Court is the Appellate Court against the Judgments or Orders passed by the learned Judicial Magistrate. The Revision Petitioner instead had filed Revision before this Court. It is the contention of the learned Counsel for the Respondent that the Order passed by the learned Judicial Magistrate-II, Tiruppur is reasonable. No need to interfere with the order of the learned Judicial Magistrate No.II, Tiruppur. The Revision Petitioner herein had not filed any marriage certificate. Instead of filing an Appeal, he had filed this Revision. This Revision is not maintainable and is to be dismissed.

Point for consideration:

Whether the Order passed by the learned Judicial Magistrate No.II, Tiruppur in CMP.No.2006 of 2018 in DVC.No.16 of 2017 dated 04.03.2019 is to be set aside as perverse?



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8. Heard the learned Counsel for the Revision Petitioner and the learned Counsel for the Respondent. Perused the order passed by the learned Judicial Magistrate No.II, Tiruppur.

9. On perusal of Para 4 of the order passed by the learned Judicial Magistrate No.II, Tiruppur, it is seen that even though the claim of the Petitioner is that he had returned all the notices to his Advocate, the reasons stated by him were found unacceptable by the said Court considering the fact that for a period of three years, he had not verified with his Counsel, the status of the case. Even though it is the contention of the Petitioner that he was undergoing treatment for kidney stones with a Siddha Doctor till 2018 for a period of three years, he had not cared to ascertain the status of the case. Therefore, the Court had rejected the contention of the learned Counsel for the husband/Petitioner in C.M.P.No.2006 of 2018 who is the Respondent in D.V.C.No.16 of 2017. After passing orders in favour of the Petitioner in Domestic Violence



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Case, Respondent/husband in the Domestic Violence Case having filed C.M.P.No.2006 of 2018 seeking to set aside the order after three years is found unacceptable by the learned Judicial Magistrate-II, Tiruppur. Also, in the counter filed by the wife in CMP.No.2006 of 2018, it is stated that the wife had preferred Maintenance Case before the learned Chief Judicial Magistrate, Tiruppur in M.C.No.51 of 2012 in which the Petitioner in Maintenance Case No. 51 of 2012 was granted monthly maintenance of Rs.2,500/- as per order dated 14.07.2013. There also the husband remained ex-parte. There also, he filed Petition to set aside ex-parte order which was allowed on payment of costs. Since the husband as Respondent in the Maintenance Case and Petitioner in the Petition to set aside ex-parte order, had not paid the costs, the Petition filed by the husband seeking to set aside the ex-parte order was dismissed. He had also not paid the maintenance amount. Therefore, the Petitioner in the Maintenance Case/wife had preferred a Petition to issue warrant for recovery of the maintenance amount. The husband who is the Respondent in the Maintenance Case was sure that he was residing outside the jurisdiction of Tiruppur. Therefore, the Police were unable to



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execute the warrant. Thereby, he had evaded. Based on these grounds, the Judgment passed by the learned Judicial Magistrate rejecting the Petition filed by the husband seeking to set aside the order is found reasonable.

10. As pointed out by the learned Counsel for the Respondent in this Revision Petition/Respondent in Domestic Violence Case ought to have filed an Appeal before the learned District Judge, Tiruppur instead straight away filed the Revision.

In the light of the above discussions, the point for consideration is answered in favour of the Respondent and against the Prosecution. The order passed in C.M.P.No.2006 of 2018 in D.V.C.No.16 of 2017 dated 04.03.2019 on the file of the learned Judicial Magistrate No.II, Tiruppur is not perverse.

In the result, the **Criminal Revision is dismissed** as having no merits. The order passed in C.M.P.No.2006 of 2018 in D.V.C.No.16 of 2017 dated 04.03.2019 on the file of the learned Judicial Magistrate



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No.II, Tiruppur is confirmed.

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The Judicial Magistrate-II,
Tiruppur.
2. The Chief Judicial Magistrate,
Tiruppur.

SATHI KUMAR SUKUMARA KURUP, J.

dh

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