

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2016

CORAM :

THE HON'BLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.1357 of 2015 and

MP.No.1 of 2015 and Crl.MP.No.11711 of 2016

J.George Gnanaraj

.. Petitioner

vs.

Emilda Jothi

.. Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the judgment of learned IV Additional District and Sessions Judge, Coimbatore passed in CA.No.160 of 2015 dated 13.10.2015 confirming the order of the learned Judicial Magistrate No.VII, Coimbatore passed in DVA.No.38 of 2012 dated 03.07.2015.

For Petitioner : Mr.C.D.Sugumar

For Respondent : Mr.D.Arivazhagan

O R D E R

This revision arises against the judgment of learned IV Additional District and Sessions Judge, Coimbatore made in CA.No.160 of 2015 dated 13.10.2015, confirming the order of the learned Judicial Magistrate No.VII, Coimbatore made in DVA.No.38 of 2012 dated 03.07.2015.

2. Heard both sides.

3. Admittedly, the marriage between the parties was of the year 1981 and they separated during 1989. After 22 long years, the respondent/wife approached the Protection Officer. Even the respondent admits that the petitioner/husband was working at Civil Aerodrome, Coimbatore, that she had called there at and was informed that he was transferred to Tiruvandrum Airport. There absolutely is no record on when she went to Coimbatore Airport and who informed her. It is respondent's contention that on coming to know about the petitioner's transfer to Tiruvandrum, she returned to her parental home. No effort has been taken by her towards joining the

petitioner. It is also the case of the respondent that the adopted son of the couples was ill-treated and not given proper education by the petitioner. A perusal of the records would reveal that such allegations made in the complaint preferred by the respondent/wife is by way of interpolation in the complaint given to the protection officer on 02.07.2012. Such adopted son was 21years on the date of the respondent filing the petition and now he is more than 25 years old.

4.Both the Courts below have totally failed to consider the case of the petitioner that despite respondents premarital affair, he married her in the year 1981 and in 1989 the respondent had left the matrimonial home. Contention of the petitioner is supported by the petitioners complaint dated 22.12.1989 before the Kasaba Police Station, Puthussery (PO), Palgat District, Kerala. Petitioner has preferred further representation to the Kasaba Police Station, Palgat District, Kerala through the Inspector of Police, Airport Police Station, Civil Aerodrome, Coimbatore informing that while he was on duty, the respondent had left the child in his house on 26.05.1990 and gone away. Both the Courts below failed to consider that it is the contention of the respondent son Praveen that he joined his mother during 2011.

5. Whether the substantive contention of the learned counsel for the petitioner it is only towards laying hands on the retirement benefit of the petitioner, when the respondent has moved out after 22long years, it is seen from the report of the protection officer that the respondent is concern about the petitioner is transferring his properties in the name of his relatives, but also he is due to retire from the service within few years thereof.

6. It is contended that the petitioner had informed upon the marriage of the lifetime of the respondent and in the absence of any divorce, it is open to the respondent to prefer petition/complaint under Section 494 IPC, if she consider such exercise is appropriate as she would be entitled to invoke Section 125 Cr.PC.

7. In the result, the criminal revision stands allowed by setting aside the order of the Courts below.

Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The IV Additional District and Sessions Judge, Coimbatore.
2. The Judicial Magistrate No.VII, Coimbatore.

+1cc to Mr.C.D. Sugumar, Advocate, S.R.No.71972.

ppa (CO)
md(09/01/2017)

Cr1.R.C.No.1357 of 2015



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