

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.R.C.No.719 of 2013

and

M.P. No. 1 of 2013

Shanmugam

..`Petitioner

Versus

Nirmala

.. Respondent

Criminal Revision filed under Section 397 & 401 Cr.P.C., to call for the records in M.P.No.5025 of 2012 in M.C.No. 6 of 2010 pending on the file of Judicial Magistrate - I, Poonamallee and set aside the order passed by the Learned Judicial Magistrate - I, Poonamallee passed on 29.10.2012 in M.P.No.5025 of 2012 in M.C.No.6 of 2010.

For Petitioner : Mr. N.P.Kumar
For Respondent : Mr.K.N.Nataraj

ORDER

This Criminal Revision Case has been filed by the petitioner challenging the order dated 29.10.2012 dismissing the petition filed by him under Section 45 of Indian Evidence Act to send the voice recorder and to compare the authenticity of the voice of the respondent.

2. The petitioner is the husband of the respondent herein and father of the second and third respondents before the Court below. The respondent herein has filed M.C. No. 6 of 2010 under Section 125 of Criminal Procedure Code seeking for a direction to the respondent herein to pay maintenance to maintain herself and the two minor children.

3. Pending the M.C. No. 6 of 2010, the petitioner has filed the present petition under Section 45 of The Indian Evidence Act by contending that he had secretly recorded the conversation that took place between the respondent and another lady in which the respondent has confessed to have been living in adultery. Therefore, in order to prove the authenticity of

voice of the respondent, the petitioner has filed the petition before the Court below to send the voice recorded by him to the experts for proving the authenticity of the voice of the respondent.

4. The trial Court dismissed the petition on the ground that in the counter in M.C. No. 6 of 2010, the respondent has not stated about the adulterous life of the respondent and therefore the present petition is nothing but an after-thought. Challenging the said order the petitioner has filed the present revision petition.

5. I heard Mr. N.P. Kumar, learned counsel appearing for the petitioner and Mr.K.N.Nataraj, learned counsel appearing for the respondent.

6. On perusal of the order, which is impugned in this Criminal Revision Case, it is seen that the trial Court has concluded that even though the petitioner has alleged that the respondent is living in adultery in the present petition in M.P. No. 5025 of 2012, he has not stated so in the counter filed in the M.C. No. 6 of 2010. Further, it was concluded that in the Chief examination of the petitioner also, he has not stated anything about the adulterous life of the respondent. It was further held that for considering the Maintenance Case filed by the respondent, it is not necessary to consider as to whether the respondent is living in adultery or not. Considering all these facts, the trial Court has rightly dismissed the application filed by the petitioner under Section 45 of The Indian Evidence Act. I find no illegality and irregularity in the said order passed by the Court below.

7. At this stage, the learned counsel appearing for the petitioner submitted that already the petitioner has filed HMOP No. 1585 of 2010 under Section 13 (1) (i) (i-a) of The Hindu Marriage Act for dissolution of the Marriage solemnised between the petitioner and the respondent. If it is so, it is open to the petitioner to raise all the grounds which are open to him in the matrimonial proceedings initiate by him for dissolution of the marriage.

8. With the above observations, the Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed. However, taking into consideration of the fact that the Maintenance Case is pending from the year 2010, the Trial Court is directed to proceed with the Trial and dispose of and the

Maintenance Case filed by the respondent herein, within a period of six months from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

The Judicial Magistrate - I
Poonamallee

+ 1 cc to Mr. N.P.Kumar Advocate, SR.77100

+ 2 cc to Mr.K.N.Nataraj Advocate, SR.76549

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NRI (CO)
NR 04/12/2017



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