

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2017

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CRP(PD) No.4901 of 2012
and M.P.No.1 of 2012

M.Sujitha

(Cause title accepted vide Order of this Court
dated 19.12.2012 made in M.P.No.1 of 2012
in CRP SR No.106876 of 2012)

... Petitioner

Vs.

K.Venkatesan

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India
praying to strike off the petition in HMOP.No.65 of 2012 on the file of the
Subordinate Judge, Sankari.

For Petitioner : Mr.R.Ezhilarasan

For Respondent : No appearance

ORDER

This revision is at the instance of the respondent in HMOP.No.65 of 2012
to struck off the original petition.

2. In the Court of the learned Subordinate Judge, Sankari, Salem District, claiming that the revision petitioner is his wife, the respondent has filed H.M.O.P.No.65 of 2012 under section 9 of the Hindu Marriage Act, 1955 seeking restitution of conjugal rights. The respondent has stated that while she was a final degree student in a college, both fell in love and on 06.02.2012, in a temple in Sankari, in the presence of many friends, they have married. However, her parents forcibly took her, hide her some where and planned her to marry her to some one. Respondent requested them to send his wife, but they refused.

3. The revision petitioner has filed this revision contending that she was not married to him. She alleges that it is an abuse of process of the Court and sought for striking off the said HMOP from the Court file.

4. The learned counsel for the revision petitioner contended that abusing of process of the Court can never be patronized by any Court. There is tendency among some unscrupulous elements to spoil life and future of a girl using judicial process. One such demon, evil spirit is the respondent.

5. In support of his submissions, the learned counsel for the revision petitioner cited **Maria Soosai and another Vs. Eskkiammal (1991 (1) LW 727)**.

6. The learned counsel for the revision petitioner contended that actually the respondent is 45 years old. Without any basis, he is glamouring for a young girl/revision petitioner, who is then only 20 years old, a college going girl. His averments in the HMOP itself very well exposes his vice.

7. The learned counsel has invited our attention to the date of marriage, the surreptitious manner in which the HMOP has been filed. He has also contended that in HCP No.2119 of 2012, these factors were also submitted by the revision petitioner, therefore, a Division Bench of this Court accepted her submissions. Thereafter, she had also filed a memo mentioning her version before the trial Court.

8. The learned counsel for the revision petitioner would submit that as the HMOP is an abuse of process of the Court, it shall be stifled at its nascent stage itself. Court birds should never be encouraged and their wings shall be cut off.

9. The learned counsel for the revision petitioner also submitted that the revision petitioner has been married to another man, she is leading her happy married life, she has become a mother. Those better halves should not become bitter halves by the machination of these kind of crooks.

10. In spite of several opportunities, the respondent, namely, Venkatesan did not appear. Learned counsel for the revision petitioner submitted that he will not appear because if he appear, he will be exposed.

11. I have anxiously considered the submissions of the learned counsel for the revision petitioner and the materials on record.

9. Basically, a Court is established, brought into existence to do justice also to undo injustice, to prevent miscarriage of justice, promote justice and curtail injustice. This Court has such extraordinary powers under Article 227 of Constitution of India. It exercises supervisory jurisdiction over subordinate Courts. When there is abuse of process of any Court, this Court has no hesitation to interfere and restore justice.

13. "In *McIlkenny v. Chief Constable of West Midlands Police Force* **(198)2 All E.R. 227**, the Court of Appeal struck out the pleading on the ground that the action was an abuse of the process of the court since it raised an issue identical to that which had been finally determined and the plaintiffs' earlier criminal trial. The court said even when it is not possible to strike out on the ground of issue estopped the action can be struck out as an abuse of the process of the court because it is an abuse for a party to relitigate question or issue which

has already been decided against him even though the other party cannot satisfy the strict rule of res judicata or the requirement of issue estoppel.

14. In [K.K. Modi v. K.N. Modi](#) (1998)2 A.I.R. S.C.W. 1166, the Honourable Supreme Court explaining 'abuse of process of court' observed as under :

Under Order 6, Rule 16, the court may, at any stage of the proceeding, order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of the process of the Court. Mulla in his treatise on the Code of Civil Procedure, (15th Edition, Volume II, page 1179, note 7) has stated that power under clause (c) of o.6, Rule 16 of the Code is confined to cases where the abuse of the process of the court is manifest from the pleadings, and that this power is unlike the power under Section 151, where under courts have inherent power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of the process of court on the basis of what is stated in the plaint.

The Supreme Court Practice, 1995 published by Sweet and Maxwell in paragraph 18/19/ 33 (page 344)

explains the phrase "abuse of the process of the court" thus: "This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

"Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The Court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases.

The court should also be satisfied that there is no chance of the suit succeeding.”

15. When it is demonstrated that the process of the Court has been misused by a person, this Court can throw away such kind of proceedings, in other words struck it off from the Court records. But, at the same time, this sweeping power must be very carefully exercised.

16. Taking the entire averments, pleadings in HMOP No.65 of 212, it is seen that the respondent has stated that he is 35 years old. But it was demonstrated that actually he is 45 years old. Revision petitioner was then just 19 years old. There is not even an iota of material with regard to his version that he has married her on 06.02.2012 in a temple in Sankari, in Salem District. No temple receipt, no paper showing his marriage with her. He filed HMOP on 25.02.2012. On the next day, he filed a complaint before the Inspector of Police, All Women Police Station, Sankari, Salem District.

16. He also filed HCP No.2119 of 2012 that she has been illegally detained by her father. She came to this Court. She had stated that she has not married him. No marriage took place between both as claimed by him. This has also been recorded by this Court and his HCP was dismissed. She also filed a memo detailing the above aspects before the Sub Court Sankari and sought for

dismissal of HMOP.

17. Now, in the facts and circumstances, considering the averments made by the respondent in the HMOP, without any basis or material, he had managed to institute the HMOP in the Sub Court stamping her as his wife so as to cause damage to her and her family and dragged them to this Court for some oblique motive. The H.M.O.P. Is groundless. No chance of success in it. It is vexatious. Waste of public time and energy. It is a clear case of abuse of process of Court. She is married to some one and living happily with him and also become mother of a child. In such circumstances, the proceedings in HMOP No.65 of 2012 should not be allowed to be continued further.

18. In view of the foregoings, ordered under :

(i) This revision succeeds.

(ii) The HMOP No.65 of 2012 is strike off from the file of Sub Court, Sankari, Salem District.

(iii) However, in the circumstances, no Order as costs.

(iv) Consequently, connected miscellaneous petition is closed.

22.03.2017

vrc

To:

1. The Principal District Judge,
Salem.
2. The Subordinate Judge,
Sankari, Salem District.

DR.P.DEVADASS, J.

vrc

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