

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.09.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.1506 of 2017

P.Soundarrajan ... Petitioner/Complainant

Vs.

Inspector of Police,
D1 Police Station,
Tiruthani Taluk,
Tiruvallur District ... Respondent/Respondent

PRAYER: Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., to set aside the order dated 05.06.2017 passed by the Judicial Magistrate, Tiruthani in C.M.P.No.2346 of 2016 and consequently direct the respondent police to conduct the fair and through investigation in accordance with law.

For Petitioner : Mr.Y.Kajanavas

For Respondents: Mr.B.Arulmozhimaran
Government Advocate (Criminal Side)

O R D E R

The revision petitioner by way of this Criminal Revision challenges an order dated 05.05.2017 of the Learned Judicial Magistrate, Tiruttani in Crl.M.P.No.2346 of 2016 in Crime No. 594 of 2014.

2.It is the case of the petitioner that his marriage was solemnized with one Uma Maheswari in the year 2008. Soon after his marriage it was misfortunate to find his wife Uma Maheswari suffered Mental illness which was purposely concealed by his in-laws. Therefore he preferred a complaint before the respondent police as against his in-laws and few others who presided over their marriage and the same was registered in Crime No.594 of 2014 for the alleged offence under sections 417, 420, 506 (ii) IPC against 10 persons.

3.The respondent police having investigated petitioner's case and on obtaining statements from witness under section 163 of Cr.P.C. found that there was no prima facie case made as against the accused and accordingly filed a report of Closure dated 01.04.2014 before the Learned Judicial Magistrate, Tiruttani. Against the said report the Revision petitioner filed a protest petition dated 07.04.2016. According to the revision petitioner his protest petition was dismissed without proper appreciation of facts and law vide the impugned order dated 05.05.2017. Hence the present Criminal Revision.

4.I heard Mr.Y.Kajanavas, learned counsel for the petitioner and Mr.B.Arulmozhimaran, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

5.The Learned Counsel for the petitioner contended that Mental illness of petitioner's wife was suppressed wittingly by the accused in the above Crime Number and thereby the revision petitioner was cheated. To substantiate his claim, he relied on few Medical reports annexed in the typed set of papers.

6.Per contra, the learned Government Advocate (Criminal Side) contended that a family dispute is given a criminal colour and there is already a divorce proceeding pending between the revision petitioner and his wife in HMOP.No.2219 of 2010 on the file of learned Family Court, Chennai. He further added that the revision petitioner and his wife lived for 9 months together after marriage and they have begotten a girl child. Thereafter the matrimonial dispute arose between the revision petitioner and his wife and the same led to the above divorce proceedings.

7.On perusal of the case records, this Court finds at outset that a divorce proceeding has been initiated by the revision petitioner as against his wife on the ground of cruelty and mental disability. In the said circumstance it is natural that revision petitioner to prove his case has to establish with sufficient oral and documentary evidence over the mental illness of his wife. At the same time it would also be possible for his wife to rebut and disprove the revision petitioner's claim.

8.More so, the Medical reports do not declare the accused / petitioner's wife to be suffering from incurable mental disease. Further it is to be noted that though the allegation is leveled

as found in the year 2008, the present complaints was found lodged in 2011.

9. In such case, this Court finds that the complaint of the revision petitioner as devoid of merits and cannot be considered at this stage. In other words if the criminal prosecution is allowed by making the accused to face the ordeal of Trial, but if the Family Court hold the case of the petitioner otherwise as claimed, the Trial faced by the accused would be nothing but an abuse of process of Law. In precise to state that the complaint of the revision petitioner could not have any substance, unless his wife found mentally disable and moreover mere allegations over a mental capacity of a person cannot be taken as true.

10. It is equally important to note that the Marriage being a sacred contract the revision petitioner must have got an opportunity to understand the accused. By doing so, he could have had a chance to detect the mental illness of his wife before marriage itself. Under said Circumstance, holding complainant / revision petitioner equally responsible for not applying his mind and for not making proper enquiry by holding that the ingredients of divorce should not be mixed with element of Criminal Offence cheating, the Learned Trial Judge has dismissed the protest petition. For the forgoing reasons, I do not find any infirmity or irregularity over the Impugned Order.

11. It is made clear that any of the observation made in this Criminal Revision petition shall not have any influence over pending Matrimonial or other Litigations between the revision petitioner and his wife.

12. In the result, the Criminal Revision Case fails and the same is hereby dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs
To

1.The Judicial Magistrate,
Tiruthani.

2.-Do- Thro The Chief Judicial Magistrate,
Tiruvallur.

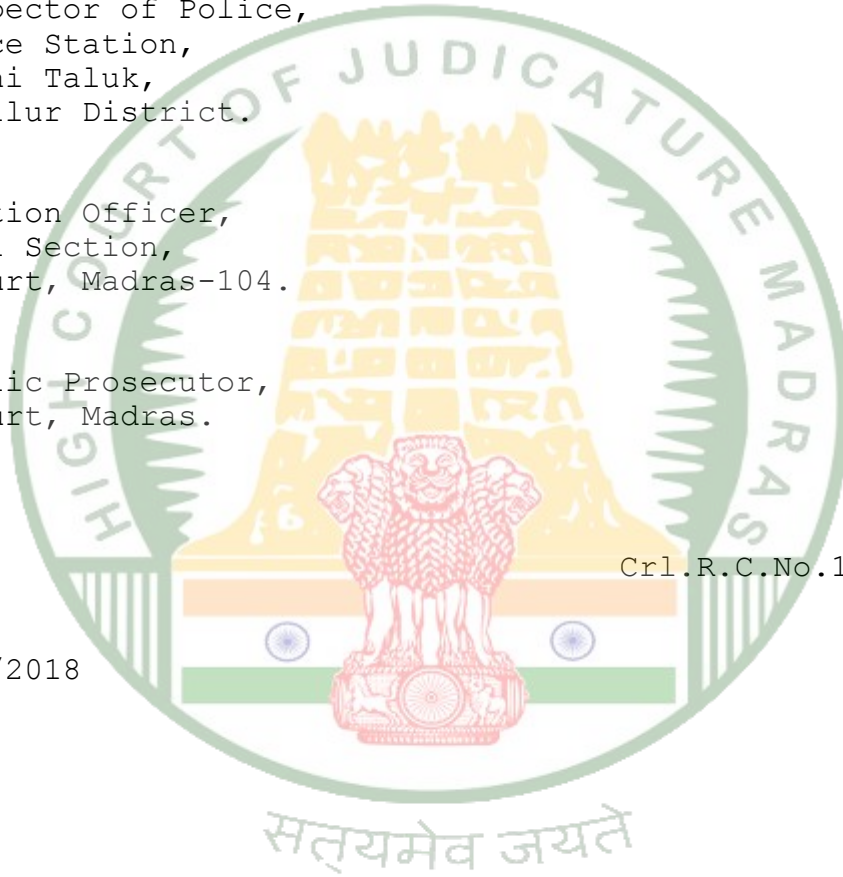
3.The Inspector of Police,
D1 Police Station,
Tiruttani Taluk,
Thiruvallur District.

4.The Section Officer,
Criminal Section,
High Court, Madras-104.

5.The Public Prosecutor,
High Court, Madras.

kk[co]
srg 26/09/2018

Cr1.R.C.No.1506 of 2017



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