

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2018

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.16001 of 2018

Anitha Nandhini

Petitioner

Vs.

1 The Inspector of Police
All Women Police Station
Madipakkam
St. Thomas Mount P.S.
Chennai

2 Vivek Gupta

Respondents

Criminal Original Petition filed under Section 482 Cr.P.C., seeking to issue a direction to the first respondent to investigate and take appropriate action on FIR No.13 of 2018 registered on 01.06.2018 on the complaint lodged by the petitioner for the offences committed by the second respondent.

For petitioner Ms. K. Sumathi

For R1 Mr. C. Raghavan
Govt. Advocate (Crl. Side)

For R2 Mr. Arumugam

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ORDER

This Criminal Original Petition has been filed seeking to issue a direction to the first respondent to investigate and take appropriate action on FIR No.13 of 2018 registered on 01.06.2018 on the complaint lodged by the petitioner for the offences committed by the second respondent.

2 For the sake of convenience and clarity, the parties are referred to by their name.

3 Anitha Nandhini got married to Vivek Gupta on 10.07.2009 and they have one child through the wedlock. Their marriage ran into rough weather resulting in the spouses getting estranged. On the complaint lodged by Anitha Nandhini, the

Inspector of Police, All Women Police Station, Madipakkam, registered a case in Cr. No.13 of 2018 on 01.06.2018 under Sections 417, 420 and 506(1) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 2002, against Vivek Gupta. While so, Anitha Nandhini has filed the present petition seeking the aforesaid relief.

4 On notice, Vivek Gupta entered appearance through Mr.Arumugam, learned counsel.

5 During the hearing of the case, both Anitha Nandhini and Vivek Gupta agreed that the matrimonial dispute between them can be amicably settled. In view of such a stand taken by them, the respective learned counsel were requested to mediate between the parties. Accordingly, Mrs. Shanthi Meenakshi, learned counsel representing Ms. K. Sumathy, learned counsel on record for Anitha Nandhini and Mr. Arumugam, learned counsel for Vivek Gupta, held several rounds of discussions with Anitha Nandhini and Vivek Gupta, pursuant to which, the duo has arrived at a compromise, the terms of which are as under:

"JOINT MEMO OF COMPROMISE
SUBMITTED BY
PETITIONER AND 2nd RESPONDENT

It is respectfully submitted by the Petitioner and 2nd respondent as follows:

1. It is submitted that during the pendency of the above CrI OP, compromise has been reached between the petitioner and the 2nd respondent and the same has been reduced into a Memorandum of Understanding which is enclosed herewith.

2. It is prayed that the same may be read and treated as part and parcel of this Joint Memo of Compromise.

3. The Petitioner and 2nd Respondent have already been living separately for over one and a half years.

4. It is necessary for them in the ends of justice and for the welfare of their minor child to pray for the following directions from this Hon'ble Court:

(i) To permit the petitioner herein to withdraw the HMOP 898 of 2017 on the file of the Sub Court Tambaram on the next hearing date (26.07.2018) since the second respondent has also agreed and signed the Memo for Withdrawal.

(ii) To permit both the petitioner and the 2nd respondent to present and file petition for dissolution of marriage under Section 13B of Hindu Marriage Act, 1955 before Hon'ble Sub-Court, Tambaram on the same day, that is, 26.07.2018 along with petition to waive & dispense with the six months' statutory waiting period contemplated under Section 13B(2) of the Hindu Marriage Act, 1955 and for this Hon'ble Court to direct the Hon'ble Sub Court Tambaram to consider and pass appropriate orders thereon without insisting on the parties to undergo the statutory period of six months in the interests of justice.

(iii) Recording the above facts, this Hon'ble Court may be pleased to pass appropriate orders in the above Crl OP and pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Dated at Chennai on this the 19th day July 2018."

6 Today, both Anitha Nandhini and Vivek Gupta are present before this Court with their respective learned counsel.

7 In view of the compromise arrived at between Anitha Nandhini and Vivek Gupta, though there is no prayer for quashment of the FIR, this Court is of the view that interests of justice would be served if the FIR itself is quashed.

8 Accordingly, the case in A.W.P.S. Cr. No.13 of 2018 is hereby quashed.

9 The learned counsel on either side represented that the parties have been living separately for the last two years and divorce petition in H.M.O.P. No.898 of 2017 filed by Anitha Nandhini is pending on the file of the Sub Court, Tambaram, as stated above in the joint memo of compromise, which, both Anitha Nandhini and Vivek Gupta want to withdraw and file a petition under Section 13-B(2) of the Hindu Marriage Act for dissolution of their marriage by mutual consent.

10 In normal circumstances, in a petition for divorce by mutual consent, a decree of divorce can be granted only after a period of six months. However, in Amardeep Singh vs. Harveen Kaur [(2017) 8 SCC 746], the Supreme Court has held that in certain cases, the waiting period of six months can be waived by the Court and a decree of divorce by mutual consent can be granted. In the said judgment, the Supreme Court has

stipulated six conditions in paragraph no.14 which read as under:

"14. Thus, the court should consider the questions:

(i) How long parties have been married?

(ii) How long litigation is pending?

(iii) How long they have been staying apart?

(iv) Are there any other proceedings between the parties?

(v) Have the parties attended mediation/conciliation?

(vi) Have the parties arrived at genuine settlement which takes care of alimony, custody of child or any other pending issues between the parties?"

11 In the opinion of this Court, given the facts obtaining in this case, this is a fit case, in which, the waiting period of six months can be waived. Therefore, this Court directs the Sub-Judge, Tambaram, to permit Anitha Nandhini to withdraw H.M.O.P. No.898 of 2017 forthwith and also entertain the petition that would be filed under Section 13-B(2) of the Hindu Marriage Act, along with the application for dispensing with the waiting period of six months.

This Criminal Original Petition stands disposed of with the above directions.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

cad

To

1 The Inspector of Police
All Women Police Station
Madipakkam
St. Thomas Mount P.S., Chennai

WEB COPY

2 The Sub Judge, Tambaram

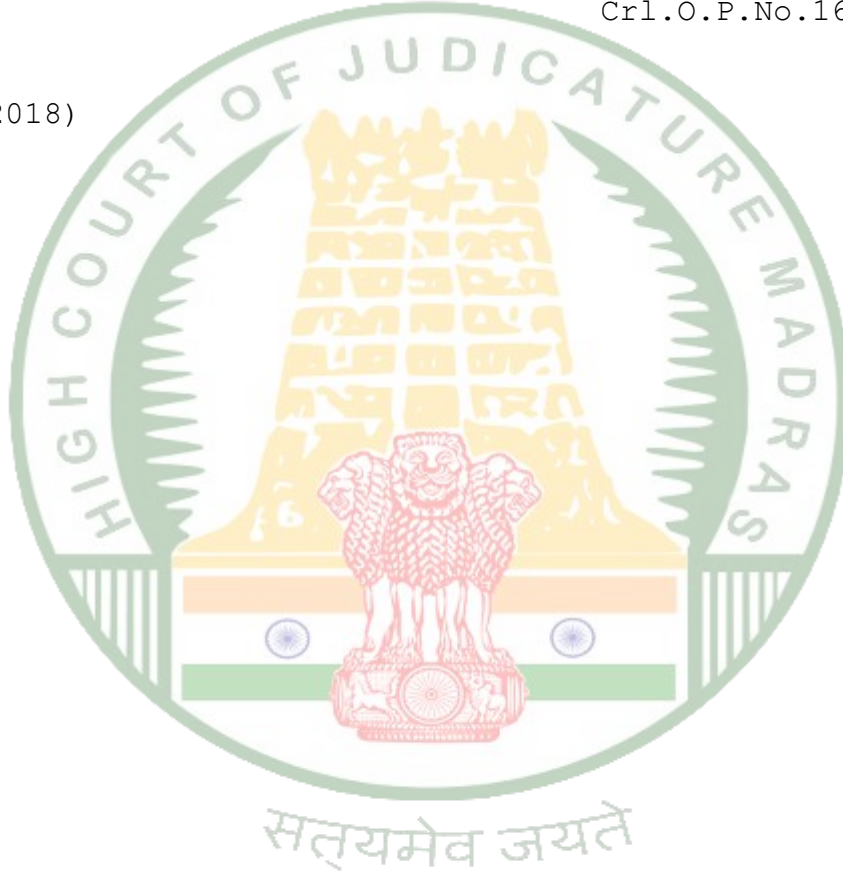
3 The Public Prosecutor
High Court, Madras
Chennai 600 104.

+1cc to Mr.A.ARUMUGAM, Advocate, S.R.No.48395

+1cc to Mr.K.SUMATHI, Advocate, S.R.No.13438 (23.07.2018)

Cr1.O.P.No.16001 of 2018

NA (CO)
TR(20/07/2018)



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