



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
09.01.2018	18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. (MD)No.11934 of 2017

IN

Crl.A. (MD) . (SR) .No.18382 of 2017

P.Mehalingam

: Petitioner

Vs.

Anisfathima

: Respondent

PRAYER in Crl.O.P. (MD)No.11934 of 2017: Criminal Original Petition is filed under Section 378(4) of the Criminal Procedure Code praying to grant leave to the petitioner to file criminal appeal and set aside the Judgment made in Crl.A.No.41 of 2016, on the file of the Additional Sessions Judge, Periyakulam, Theni District, dated 28.03.2017, confirming the Judgment in C.C.No.1 of 2013, dated 04.04.2016, on the file of the learned Judicial Magistrate, Periyakulam, Theni District.

PRAYER in Crl.A. (MD) . (SR) .No.18382 of 2017: Appeal is filed under Section 378(4) of the Criminal Procedure Code against the Judgment dated 28.03.2017, made in Crl.A.No.41 of 2016, on the file of the learned Additional Sessions Judge, Periyakulam, Theni District, confirming the Judgment dated 04.04.2016, made in C.C.No.1 of 2013, on the file of the learned Judicial Magistrate, Periyakulam, Theni District.

For Petitioner : Mr.P.Mehalingam
party-in-person (in both Petitions)

For Respondent : Mr.R.Shankar Ganesh (in both Petitions)

ORDER

For the sake of convenience, the parties will be referred to by their names.

<https://hcservices.courts.gov.in/hcservices/> 2. Learned P.Mehalingam appeared in person and Mr.R.Shankar Ganesh, learned counsel for Anishfathima.



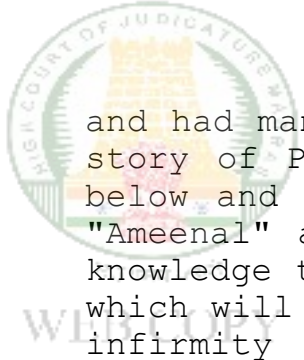
3. The factual matrix of the case is as under:-

P.Mehalingam is a retired Village Administrative Officer. The husband of Anisfathima, by name, N.Abdul Nassar, was working as Junior Assistant in the office of the District Collector, Theni and he died on 05.10.2003. Thereafter, Anisfathima was given appointment as Village Administrative Officer on compassionate ground and it appears that P.Mehalingam had approached Anisfathima in connection with some revenue work and he seems to have misbehaved with her, resulting in Anisfathima lodging a police complaint against P.Mehalingam in connection with which, criminal cases have been registered against P.Mehalingam and the prosecution against him are pending.

4. While so, P.Mehalingam filed a private complaint in C.C.No.1 of 2013 against Anisfathima alleging that Anisfathima is not the wife of the deceased - N.Abdul Nassar and that she had obtained appointment on compassionate ground fraudulently and that her husband is one Sheik Mohideen. This private complaint was taken on file as C.C.No.1 of 2013 by the learned Judicial Magistrate, Periyakulam and trial was conducted, in which P.Mehalingam examined himself as PW-1 and marked 17 exhibits. When Anisfathima was questioned about the incriminating circumstances appearing against her under Section 313 of the Code of Criminal Procedure, she denied the same. Thereafter, Anisfathima examined herself as DW-1 and examined one Dhanaraj as DW-2. On behalf of Anisfathima, eight exhibits were marked. The Trial Court, by order dated 04.04.2016, in C.C.No.1 of 2013, honourably acquitted Anisfathima by holding that she is the widow of N.Abdul Nassar and after she was given appointment on compassionate ground, she got married to one Sheik Mohideen and that the prosecution has been engineered by P.Mehalingam with ulterior motive, since Anisfathima has given complaint against him.

5. Aggrieved by the acquittal of Anisfathima, P.Mehalingam filed Crl.A.No.41 of 2016, before the Additional District and Sessions Court, Periyakulam, Theni District. By Judgment dated 28.03.2017, the learned Additional District and Sessions Judge, Periyakulam, dismissed the said appeal filed by P.Mehalingam and confirmed the order passed by the Trial Court, acquitting Anisfathima. Aggrieved by the acquittal passed by the Courts below, P.Mehalingam has filed this Criminal Appeal by invoking Section 378 of the Code of Criminal Procedure, along with the present Special Leave Application.

6. P.Mehalingam, who appeared in person, contended that the actual name of the accused is Ameenal and she is calling herself as "Anisfathima @ Ameenal", in order to claim herself as the widow of the deceased Abdul Nazer. In other words, it is the contention of P.Mehalingam that the wife of the deceased - Abdul Nazer is Ameenal and not Anisfathima and that Anisfathima assumed the alias Ameenal



and had managed to obtain appointment on compassionate ground. This story of P.Mehalingam has been considered in detail by the Courts below and has been rejected holding that the accused is called as "Ameen" at home and her actual name is Anisfathima. It is common knowledge that in Tamil Nadu, people will have a nick name at home, which will be different from the actual name. Therefore, there is no infirmity in the conclusion arrived at by the Courts below, warranting interference by this Court.

7. It is a trite that Special Leave to file appeal against acquittal is not a matter of routine and the Court will be justified in granting Special Leave, only if it is satisfied that the reasoning given by the Courts below for acquitting the accused appears perverse. In this case, Anisfathima has waived her right of silence under Section 315 of the Code of Criminal Procedure and has got into the witness box and has deposed. The Courts below have considered the evidence adduced by both sides in detail in the right perspective.

8. In such view of the matter, this Court is of the view that this is not a fit case, where leave could be granted to P.Mehalingam to file appeal. Accordingly, this Criminal Original Petition is dismissed. Consequently, CrI.A.(MD).(SR).No.18382 of 2017 stands rejected.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Additional Sessions Judge,
Periyakulam, Theni District.

2.The learned Judicial Magistrate,
Periyakulam, Theni, District.

+1cc to M/S.MEHALINGAM, Advocate SR.No.43052.

+1cc to M/S.R.SHANKAR GANESH, Advocate SR.No.43016.

ORDER MADE IN
CrI.O.P.(MD)No.11934 of 2017
IN
CrI.A.(MD).(SR).No.18382 of 2017
18.01.2018

NB

SDS/KKR/SAR 1/29.01.2018/3P/5C

<https://hcservices.ecourts.gov.in/hcservices/>