



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD).No.2037 of 2017 and
C.M.P.(MD)No.10167 of 2017

Sanjai Kumar

... Petitioner/Petitioner

Vs.

Rama

... Respondent/Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this Civil Revision petition with cost by setting aside the fair and final order dated 06.10.2017 in I.A.No.147 of 2017 in H.M.O.P.No.7 of 2015 on the file of the Family Court, Srivilliputhur.

For Petitioners : Mr.S.Venkatesh,
for Mr.A.Sivaji

For Respondent : Mr.P.Subbaraj

O R D E R

H.M.O.P.No.7 of 2015 on the file of the Family Court, Srivilliputhur, was filed by the Revision petitioner herein for dissolving his marriage with the respondent herein. The specific case of the Revision petitioner is that the respondent is having illicit intimacy with one Udhayasuriyan. In the said H.M.O.P, the Revision petitioner filed I.A.No.147 of 2017 for appointing an Advocate Commissioner to secure the voice sample of the respondent for comparing the same with what is available in Computer Disk and Pen Drive submitted by the petitioner herein before the Court. The Court below by order dated 06.10.2017 dismissed the said Interlocutory application. Questioning the same, the Civil Revision petition has been filed.

2. Heard the learned counsel on either side.

view⁴ of

"75. So viewed, the implicit power of a Court to direct medical examination of a party to a matrimonial litigation in a case of this nature cannot be held to be violative of one's right of privacy.

1. A matrimonial court has the power to order a person to undergo medical test.

3. However, the Court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the Court. If despite the order of the Court, the respondent refuses to submit himself to medical examination, the Court will be entitled to draw an adverse inference against him."

6. According to the Court below, it is open to the petitioner to prove the illicit intimacy of the respondent with the other person through oral evidence. This Court is unable to appreciate the reasoning of the Court below. When the best evidence in the form of telephonic conversation is available, the petitioner need not struggle to establish his case through other means. When the best evidence is available, that should be always brought on record.



7. In this view of the matter, the order impugned in this Civil Revision petition is set aside. The Civil Revision petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

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/True Copy/

Sd/-

Assistant Registrar (T&P)

Sub Assistant Registrar (CS-III)

To

The Judge,
Family Court, Srivilliputhur.

COPY TO

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. 2COPIES

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- + 1 CC TO Mr.P.SUBBURAJ , ADVOCATE IN SR No.92079.
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