

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH  
AND  
THE HONOURABLE MR. JUSTICE C.SARAVANAN

CMA No. 702 of 2015

Sherin James .. Appellant/Petitioner

Vs.

Tamilselvan .. Respondent/ Respondent

Prayer: Appeal filed under Section 19 of the Family Court Act, 1988 against the fair and final order made in S.M.O.P. No.3 of 2014 dated 04.02.2015 on the file of the Family Court, Erode.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondent : No appearance

JUDGMENT  
(Delivered by M.M.Sundresh, J.)

This appeal is preferred by the wife against the dismissal of the petition seeking divorce filed under Section 27 (d) of the Special Marriage Act, 1954.

2. It is the case of the appellant that the marriage has been done under certain circumstances when she was a student and the respondent was working as Lab Technician. The appellant hails from the State of Kerala and Christian by birth. The respondent is a Hindu. Since the marriage was done without the valid consent of the appellant, she is entitled to divorce.

3. The learned Judge of the Family Court, Erode, dismissed the petition filed on the ground that it is not maintainable, since she has questioned the marriage itself and, therefore, Section 27(d) of the Special Marriage Act, 1954 cannot be invoked.

4. It appears from the submission made by the counsel for the appellant, who also produced a letter said to have been written by the father of the respondent, that both the parties are agreeing for divorce by mutual consent. Perhaps, that is the reason why the respondent is not willing to appear before us, despite notice having been issued and name printed in the cause list. The Family court has also not gone in to the merits of the case. In such view of the matter, we are not inclined to confirm the order passed by the Family Court, especially in view of Section 28 of the Act which provides for mutual consent between the parties.

5. Accordingly, the order of the Family Court stands set aside and the matter is remitted for fresh consideration. We may also note that even at the time of filing the petition, the appellant was only 22 years and the respondent was 34 years. It is well open to the appellant to rely upon the letter said to have been written by the father of the respondent before the Family Court. Considering the facts and circumstances of the case, we direct the Family Court, Erode to dispose of S.M.O.P. No.3 of 2014 within a period of three months from the date of receipt of a copy of this order.

Accordingly, the appeal is allowed. No costs.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

ssm

To:

Judge, Family Court, Erode

+1cc to Mr.S.Kaithamalaikumaran, Advocate SR.No.13255

CMA No. 702 of 2015

RK(CO)

GMV(21/05/2019)