

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.4636 of 2019
and
Crl.M.P.No.2742 of 2019

KPR Vijay Saravanan ... Petitioner/Petitioner/Accused No.1
Vs.

The State represented by the
Station House Officer,
All Women Police Station,
Palladam, Tiruppur Dist.
(Crime No.7of 2017) ...Respondent/Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482
Cr.P.C. to call for the records pertaining to the order dated
13.02.2019 made in C.M.P.No.273 of 2019 in C.C.No.178 of 2017
pending on the file of the Judicial Magistrate, Palladam and set
aside the same.

For Petitioner : Mr.P.Mahesh Kumar

For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor.

O R D E R

This Criminal Original Petition has been filed to set
aside the order dated 13.02.2019 made in C.M.P.No.273 of 2019 in
C.C.No.178 of 2017 by the learned Judicial Magistrate, Palladam.

2.The learned counsel for the petitioner submitted that the
marriage between the petitioner and the defacto complainant was
solemnized on 07.06.2015 with the consent of both side families.
He further submitted that before marriage both the families know
each other and since the defacto complainant expressed her

desire for marriage, the marriage took place. After marriage, they lived happily for few months and thereafter the defacto complainant went to her parental home for pursuing her studies. It is admitted by the learned counsel for the petitioner that the petitioner was suffering from some allergic problem before marriage and was on regular check ups. Later due to this infection, the petitioner had to compulsorily undergo kidney transplantation and underwent surgery during the year 2016. After this surgery, the defacto complainant expressing her wish to separate from the petitioner, she sent a legal notice for divorce as well as compensation of Rs.6 Crores. Since, the petitioner and his family did not accept the same, she gave a complainant before the respondent Police and a case in Crime No.7 of 2017 came to be registered for the offences under Sections 498(A), 406, 506(i), 417 r/w 420 of IPC and a case under Domestic Violence Act was filed in D.V.A.No.3 of 2017 before the learned Judicial Magistrate, Palladam and the same is pending. During the trial, the defacto complainant was examined as P.W.1, wherein she denied the handwriting in certain documents viz., love letters, a note book and a handmade album. Hence, the petitioner filed CMP.No.273 of 2019 under Section 92 Cr.P.C., which was dismissed by the Court below. Challenging the same, the petitioner is before this Court with the aforesaid prayer.

3.The learned Additional Public Prosecutor submitted that a final report has been filed by the respondent Police before the Court below and it reveals that the petitioner has cheated the defacto complainant by suppressing the fact that he is suffering from kidney failure from the year 2004. He further submitted that the petitioner cannot raise any further compulsion to answer the question once it is denied.

4.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent and perused the materials placed before this Court.

5.On perusal of the impugned order, it is seen that there is no doubt that the petitioner and the defacto complainant known each other even before marriage and their marriage was performed on the consent of both side relatives and they lived happily for quiet a long time. The allegation against the petitioner by the defacto complainant is that he had suppressed the fact that he had kidney ailment and got married and after he had to compulsorily undergo kidney transplantation. Though he had submitted the letters, note books and hand made albums before the Court below and submitted that the defacto complainant very well know about his disease even before marriage, the defacto complainant refused the hand writting in the said documents. Hence, the petitioner filed a petition u/s 91 Cr.P.C. To summon

the documents from the institutions with regard to the defacto complainant. The learned trial Judge after detailed discussion and applying the dictum laid down by this Court in the case of Alagesan and ors. Vs.State in 2008 SCC online Mad 183, had dismissed the petition as not maintainable.

6. From the above, I do not find any infirmity or illegality in the order passed by the learned Judicial Magistrate, Palladam. Therefore, this Court is not inclined to interfere with the order passed by the Court below. Accordingly, the Criminal Original Petition is dismissed. However, the petitioner is at liberty to mark the documents viz., love letters, notebook and a handmade album etc., while examining their witnesses subject to the veracity and genuinity of the documents.

rm

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Station House Officer,
All Women Police Station,
Palladam, Tiruppur Dist.
(Crime No.7of 2017)

2. The Judicial Magistrate,
Palladam.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Mahesh Kumar, Advocate, S.R.No.16021

VBA(CO)
KAK(21/02/2019)

Cr1.O.P.No.4636 of 2019

WEB COPY