

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.407 of 2019
and CRL.M.P.No.8914 of 2019

Surendran

..Appellant/Respondent/Petitioner

Vs

Femy Parimala

..Respondent/Petitioner/Respondent

Criminal Appeal filed under Section 341 Cr.P.C. to set aside the order dated 04.06.2019 and 28.06.2019 made in I.A.No.658 of 2017 in O.P.No.581 of 2013 on the file of the V Additional Family Court, Chennai.

For Appellant : Mrs.Selvi George

For Respondent : Mr.V.K.Sathyamoorthy

J U D G M E N T

This Criminal Appeal has been preferred by the appellant to set aside the orders dated 04.06.2019 and 28.06.2019 (which appear to be docket orders in nature) passed by the Judge, V Additional Principal Judge, Family Court, Chennai in I.A.No.658 of 2017 in O.P.No.581 of 2013.

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

3.Surendran got married to Femy Parimala on 14.05.2008 at CSI Church, Nagercoil and after marriage, they got estranged, on account of marital discord. Surendran was employed in Dubai. Therefore, Surendran gave a Power of Attorney to his father Wilky Glover, to prosecute the matrimonial proceedings that was initiated by him, for divorce in I.D.O.P.No.581 of 2013 before the Family Court, Chennai. The I.D.O.P. petition was presented in the Family Court on 21.01.2013 and was returned for complying certain defects on 31.01.2013. On 13.02.2013, the petition was re-presented.

4.It is the admitted case of the parties that Surendran was not in India from 23.01.2013 to 13.03.2013 and from 19.03.2013

to 19.08.2015. In the meantime, on the complaint lodged by Femy Parimala, the Inspector of Police, W-8 All Women Police Station, Thirumangalam, a case in Crime No.9 of 2013 under Section 498-A, 417, 406, 506(I) IPC and Sections 4 and 6 of Dowry Prohibition Act, 1961 against Surendran and his family members. Apprehending arrest, Surendran and his family members obtained anticipatory bail from the Court of Session, Chennai.

5. On 17.08.2015, Surendran's mother died. On coming to know of which, he returned to India on 19.08.2015. He was intercepted at the airport when he arrived, since a Look Out Circular was issued by the police in connection with crime No.9 of 2013. Femy Parimala has also initiated proceedings under the Domestic Violence Act, 1961 in D.V.No.106 of 2016 before the Mahila Court, Egmore, Chennai against Surendran and his family members, claiming various reliefs including maintenance and residence. Since Surendran was granted anticipatory bail in crime No.9 of 2013, the immigration authorities did not arrest him at the airport and he was released after two days of detention.

6. I.D.O.P.No.581 of 2013 that was filed by Surendran for divorce under the Indian Divorce Act, 1869 before the Family Court, Chennai was dismissed for default on 30.09.2013. While this being so, Femy Parimala filed I.A.No.658 of 2017 in O.P.No.581 of 2013 under Section 340 Cr.P.C. for initiating a prosecution against Surendran on the following allegations :

- i. On 13.02.2013, I.D.O.P.No.581 of 2013 was re-presented before the Family Court and the re-presentation endorsement contains the signature of G.Surendran. This signature could not have been made by him because, he was not available in India on 13.02.2013;
- ii. An affidavit dated 02.04.2013 has been filed in I.D.O.P.No.581 of 2013 purported to have been signed by Surendran, seeking permission to permit his father Wilky Glover to represent and conduct the case on his behalf and that he could not have signed in the said affidavit because, he was not in India at that time;
- iii. An affidavit dated April 2013 has been filed in I.D.O.P.No.581 of 2013 before the Family Court, seeking permission to record his evidence by videoconferencing and that he could not have signed that affidavit because, he was not in India at that time.

The trial Court has allowed I.A.No.658 of 2017 by order dated 09.04.2019, challenging which, Surendran is before this Court.

7. Heard Mrs.Selvi George, learned counsel for Surendran and Mr.V.K.Sathyamoorthy, learned counsel for Femy Parimala.

8.It is not the case of Femy Parimala that Surendran had forged her signature in any of the aforesaid documents. It is also not her case that the signatures referred to above are not that of Surendran. It is her specific case that when Surendran is abroad, how he could have signed them.

9.It is the specific case of Surendran that he had filed a petition for divorce in the Family Court, when he was in India and since he had to go to Dubai for his job, he had given a Power of Attorney to his father to represent him in the Family Court.

10.As regards the first allegation relating to the representation endorsement, the signature neither appears to be that of Surendran nor that of his father. As regards the second allegation relating to the affidavit dated 02.04.2013, though the affidavit is in the name of Surendran, the signature below is that of his father. In other words, his father has not put Surendran's signature, but has put his own signature. The only mistake he committed was that, he should have stated in the preamble portion of the affidavit that he has signed the affidavit for and behalf of Surendran. As regards the third allegation relating to the affidavit dated April 2013, the signature therein is that of Surendran and Mrs.Selvi George submitted that the draft affidavit was sent to him by mail and he signed the affidavit and sent it back by post. Mr.Sathyamoorthy contended that if that had been done, an official of the Indian embassy should have attested the same.

11.Rebutting this contention, Mrs.Selvi George contended that after signing the affidavit, out of sheer ignorance, Surendran did not obtain the attestation from the embassy officials in Dubai.

12.This Court gave its anxious consideration to the rival submission.

13.As alluded to above, it is not the case of Femy Parimala that Surendran had forged his signature or had fabricated any Court record. It is also not her case that the impugned signatures are not those of Surendran. It is her contention that when Surendran was abroad, he could not have signed the third affidavit.

14.A proceeding under Section 340 Cr.P.C. can be initiated, only if the Court is of opinion that, "it is expedient in the interests of justice that an enquiry should be made". In this case, the affidavits were filed in the year 2013 and the main case itself was dismissed for default on 30.09.2013. Femy Parimala filed a petition under Section 340 Cr.P.C. in the year

2016 to prosecute Surendran. Of course, that by itself, cannot be a good reason to negative the prayer. However, in this case, there has been so much of acrimony between the parties, as could be seen from the number of litigations fought between them. Section 340 Cr.P.C. read with 195 Cr.P.C. is not a weapon to wreak vengeance.

15. Therefore, in the facts and circumstances of the instant case, it is not expedient in the interests of justice, to order an enquiry and spend precious judicial time on the legal quarrel between the spouses. Admittedly, Femy Parimala is a lawyer by profession and Surendran is jobless, he having lost his job as he has not been able to go back, in view of the prosecution in C.C.No.7414 of 2014 before the Chief Metropolitan Magistrate, Egmore, Chennai in connection with a case under Section 498-A IPC.

In the result, this appeal is allowed and the docket orders dated 04.06.2019 and 28.06.2019 passed by the V Additional Principal Judge, Family Court, Chennai in I.A.No.658 of 2017 in O.P.No.581 of 2013 are set aside. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gya

To

- 1) The V Additional Principal Judge,
Family Court, Chennai.
- 2) - do - through The Chief Metropolitan Magistrate,
Egmore, Chennai - 8.

+1 cc to M/s.Selvi George, Advocate, S.R.No.68340

+2 ccs to M/s.C.Rajan, Advocate, S.R.No.68307

CRL.A.No.407 of 2019

RR(CO)
SSM(13/09/2019)