

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 27.02.2019****C O R A M****THE HONOURABLE MR.JUSTICE P.VELMURUGAN****Criminal Appeal No.690 of 2017**

S.Femy Parimala

... Appellant

-Vs-

Glover Surendran

... Respondent

Criminal Appeal filed under Section 341 of the Code of Criminal Procedure, praying to set aside the order dated 30.08.2017 passed in I.A.No.658 of 2017 in O.P.No.581 of 2013 on the file of the V Additional Family Court Judge, Chennai.

For Appellant : Mr.V.K.Sathiamurthy

For Respondent : Mr.Nagarajan
for M/s.Majestic Law Firm

J U D G M E N T**WEB COPY**

This appeal arises against the order of learned V Additional Family Court Judge, Chennai, passed in I.A.No.658 of 2017 in O.P.No.581 of 2013 on 30.08.2017.

2. The appellant is the wife and the respondent is the husband. The

appellant originally gave a complaint before the Commissioner of Police, Greater Chennai for dowry, cruelty and harassment, which was forwarded to the Inspector of Police, W-8, All Women Police Station, for offences under Sections 498(A), 406, 417, 506(i) IPC and 4 & 6 of DP Act and the same is pending before the Chief Metropolitan Magistrate, Allikulam, Chennai for trial in C.C.No.7414 of 2014. Originally, the respondent herein/husband filed a petition before the V Additional Family Court, Chennai in OP.No.581 of 2013 seeking divorce on 21.01.2013. The said petition was returned on 31.01.2013 for compliance to produce the proof of joint living and to comply the same, one month time was given. The said petition was re-presented on 13.02.2013, which was forged and impersonated as the respondent left to Muscat on 23.01.2013 and returned to India only on 13.03.2013, which is evident by the entry in the Passport, the same was numbered as OP.No.581 of 2013. The respondent herein/husband filed an application in I.A.No.1280 of 2013 under Section 151 C.P.C., to reconstruct the main O.P.No.581 of 2013 on 27.04.2013 as the same was misplaced. He has also filed a petition before the said Court since he was not present on the date of hearing on 13.02.2013, because, the respondent was at Muscat from 20.01.2013 to 13.03.2013. Therefore, the endorsement dated 13.02.2013 was forged and impersonated by the father of the respondent herein/husband. Seeking relief under Section 340 Cr.P.C., the appellant/wife, filed an application in I.A.No.658 of 2017, praying to initiate legal action for forgeries and impersonations made by Mr.Willey Glover, who is the father of the respondent. The Court below dismissed the petition on 30.08.2017, against which, the petitioner in I.A.No.658 of 2017 has

preferred the present appeal.

3. The petition in I.D.O.P.No.581 of 2013 was originally filed on 21.01.2013 and the same was returned for the proof of joint living on 31.01.2013. Subsequently, the said petition was re-presented on 13.02.2013 and numbered as O.P.No.581 of 2013. At the time, the respondent herein was in Muscat and also his own passport shows that he was not in India during the period 23.01.2013 to 13.03.2013. According to the appellant, the endorsement made in the O.P.No.581 of 2013 dated 13.02.2013 was forged and impersonated by the father of the respondent herein by using the Power of Attorney, which was given by the respondent. When the matter was brought to the Court, the Court below, without considering the facts, dismissed on the ground of delay and enquiry under Section 340 Cr.P.C., was not necessary.

4. Heard the learned counsel on either side and perused the materials on record.

5. The learned counsel for the petitioner would submit that the learned Judge, Family court need not have issued notice to the respondent and the same was not contemplated under Section 340 Cr.P.C and placed reliance on the decision of the Hon'ble Apex Court in the case of **Prithvi Vs. State of Maharashtra and others** reported in **(2002) 1 Supreme Court Cases 253**.

6. The learned counsel for the respondent would submit that the respondent gave the Power of Attorney to his father and the respondent has not denied his signature. It is for the respondent to deny the signature. Further, the Court below also compared the signatures and found that there was no forgery and impersonation. The petition was filed only to delay the proceedings.

7. The Judge, Family Court simply dismissed the petition without considering the nature of the complaint. If any petition filed under Section 340 Cr.P.C., the Court has to follow the procedure contemplated under Section 340 Cr.P.C. On a reading of the entire materials, the procedure adopted by the concerned Judge, Family Court is not in accordance with law. Therefore, this Court found that there is perversity and infirmity in the order passed by the Court below under Section 340 Cr.P.C.

8. Therefore, this Criminal Appeal shall stand allowed. The order dated 30.08.2017 passed in I.A.No.658 of 2017 in O.P.No.581 of 2013 on the file of the V Additional Family Court, Chennai is set aside. The I.A.No.658 of 2017 in the above said OP.No.581 of 2013 is remitted back to the V Additional Family Court Judge, Chennai for fresh disposal. The learned V Additional Family Court Judge, Chennai is directed to consider the above petition afresh and dispose of the same in accordance with law.

27.02.2019

Index: Yes / No Speaking / Non-Speaking order
kmi

Note: Issue Order Copy on 04.03.2019.

To
1.The Judge,
V Additional Family Court, Chennai.



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P.VELMURUGAN, J

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