

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.10.2020

PRONOUNCED ON : 28.10.2020

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.NO.15598 OF 2015

AND M.P.NO.1 OF 2015

Kumar ..Petitioner / Respondent

Vs.

Maheshwari .. Respondent / Petitioner

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records relating to impugned complaint/application filed by the respondent in M.C.No.25 of 2012 on the file of the learned Judicial Magistrate-I, at Puducherry and quash the same as highly illegal, unlawful and abusive process of law.

For Petitioner : Mr.Prakash Adiapatham

For Respondent : Mr.A.K.Raja Raman

ORDER

This Criminal Original Petition has been filed to quash the proceedings in M.C.No.25 of 2012, pending on the file of the learned Judicial Magistrate-I, Puducherry.

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

3. It is the case of Maheshwari that her marriage with Kumar was held on 10.02.2006 at Thiruvanthipuram Devanatha Swami Temple at Cuddalore, followed by a marriage reception at S.R.Kalyana Mandapam at Puducherry; and at the time of marriage, 26 sovereigns of gold ornaments, house hold articles, one Pulsar motorbike and a cash of Rs.50,000/- was given to Kumar as sridharna; after the marriage, she lived in a joint family with Kumar's parents and unmarried sisters of Kumar; because of the uncouthed behaviour of Kumar, his father threw him out of his house and thereafter, they both lived in Maheshwari's house at

Door No.31, 4th Cross, Anthoniar Koil Street, Oulagret, Puducherry. Soon, Kumar showed his true colours and started physically and sexually tormenting Maheshwari and left her in the month of February' 2011; despite his uncivil behaviour, she was prepared to live with him and tried her best to mend fences with him, but in vain. On 07.02.2012, Kumar along with his family members came to the house of Maheshwari and threatened her to sign the divorce papers, but she refused. On the same day, at about 8.00 p.m., she went to the police station and lodged a complaint against Kumar, but no action was taken. Thereafter, Maheshwari initiated proceedings under Domestic Violence Act, in M.C.No.25 of 2012 before the learned Judicial Magistrate, Puducherry, for various reliefs against Kumar, challenging which, Kumar has filed the present quash petition under Section 482 Cr.P.C.,

4. Heard Mr.Prakash Adiapadam, learned counsel for Kumar and Mr.A.K.Raja Raman, learned counsel for Maheshwari.

5. Mr.Prakash Adiapadam, learned counsel made the following submissions :

a) That the proceedings are barred by limitation inasmuch as in paragraph No.9 of Maheshwari's petition, she has stated that Kumar left her in the month of February '2011, but, the petition in M.C.No.25 of 2012, was filed only on 25.09.2012, which is after a period of one year. In support of his contentions, he placed reliance on the following judgments:

- Inderjit Singh Grewal Vs. State of Punjab & Anr. [2011 (4) Crimes (SC) 51]
- V.Nagarajan & Others Vs. B.P.Thangaveni [2019 1 LW (Cr1) 936]
- Order of this Court dated 20.07.2020 in Cr1.OP.No.29476 of 2017 [N.Prasad Vs.Harithalakshmi]

b) Maheshwari was already married to one Thirugnanaselvam and suppressing that marriage, she has married Kumar and hence, this marriage itself is void.

c) A criminal prosecution is pending against Maheshwari for cheating Kumar, by suppressing her first marriage with one Thirugnanaselvam .

6. Mr.A.K.Raja Raman, counsel for Maheshwari, refuted the aforesaid submissions and contended that :

a) Limitation is a question of fact and law, which cannot be looked into in the proceedings under Section 482

Cr.P.C., especially in the light of the categorical statement of Maheshwari in paragraph No. II (8), wherein she has stated that Kumar along with his family members came to her house on 07.02.2012 and threatened her to sign the divorce papers. Again in paragraph No.III (h & i) under the heading "Economic Violence", Maheshwari has stated that on 23.09.2012 at about 11.00 a.m., Kumar came to her house along with his relatives, sisters and henchmen, and caused damage to the properties in her house.

b) With regard to the allegation that Maheshwari was married to one Thirugnanaselvam, the learned counsel produced the order copy in M.O.P.No.92/2000, passed by the Family Court, Pondicherry on 17.01.2006, granting a decree of divorce dissolving the marriage that was solemnized on 09.04.2000 between Maheshwari and Thirugnanaselvam.

c) A copy of an agreement dated 28.03.2006 was also produced by the counsel, in which, Kumar has categorically stated that he was aware of the Maheshwari's earlier marriage and knowing it fully well, he had married her on 10.02.2006.

7. This Court gave its anxious consideration to the rival submissions.

8. At the outset, Maheshwari is not asking for a protection to reside in the house of Kumar. On the contrary, she is praying for a protection order that Kumar should not disturb her by coming to her house at Door No.31, 4th Cross, Anthoniar Koil Street, Oulagret, Puducherry. In the petition, she has clearly stated that Kumar came to her house on 23.09.2012 and 24.09.2012, abused her and caused damage to her properties. The Domestic Violence complaint has been filed by her on the next day i.e., 25.09.2015 and hence, the same is not barred by limitation. That apart, as rightly pointed out by Mr.A.K.Raja Raman, the Supreme Court in Krishna Bhattacharjee Vs. Sarathi Choudhury & Another [2016 (2) SCC 705] has very clearly stated that, the acts of Domestic Violence are continuing offences for which limitation cannot be fixed. This judgment of the Hon'ble Supreme Court has not been noticed by the learned Single Judge of this Court, who has placed reliance only on the judgment of the Hon'ble Supreme in Inderjit Singh Grewal Vs. State of Punjab & Anr [2011 (4) Crimes (SC) 51] in his order in Crl.OP.No.29476 of 2017. In Krishna Bhattacharjee (supra), the Supreme Court has referred to Inderjit Singh Grewal (supra), since the former is subsequent to the latter, this Court is bound by the former.

9. Yet another aspect that has been lost sight of by the learned counsel for Kumar is, Section 20(1)(d) of the Domestic Violence Act, which provides for granting relief of maintenance under Section 125 Cr.P.C., which has no period of limitation. In this case, Maheshwari has asked for monthly maintenance on the ground that she is unable to maintain herself, and the trial Court can grant that relief under Section 20(1)(d) of the Domestic Violence Act, 2005 r/w. 125 Cr.P.C.,

10. In the result, this Court does not find any merit in the petition filed by Kumar for quashing the Domestic Violence proceedings in M.C.No.25/2015 dated 25.09.2012 on the file of the Judicial Magistrate-I, Puducherry, and hence, it is dismissed. The petitioner is directed to appear before the trial Court on the hearing date in December 2020 and take part in the proceedings, failing which, the trial Court can secure his presence by issuing a non-bailable warrant. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

The Judicial Magistrate No.I
Puducherry.

+1cc to Mr.A.K.Raja Raman, Advocate, S.R.No.34919

Cr1.O.P.No.15598 of 2015

VM(CO)
CS/01/12/2020

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