

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.10.2020

Pronounced on : 02.11.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.22976 of 2015
and Crl.M.P.Nos.1 & 2 of 2015

1.Thirumoorthy
2.Vasuki
3.Kannan
4.Kumaravel
5.Rajini @ Maheswari
6.Krishnan

..Petitioners / Accused

Vs.

1. The State, Rep by
Inspector of Police
All Women Police Station
Tiruvannamalai.

2. Sumathi

..Respondents

Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records relating to STC.No.176 of 2015 on the
file of the Judicial Magistrate No.I, Tiruvannamalai and to
quash the same.

For Petitioners : Mrs.J.Sundarakanchani

For Respondents : Mr.L.Charles Premkumar
Govt. Advocate [Crl Side] for R1
Mr.P.Kannan for R2

ORDER

This Criminal Original Petition has been filed to quash the
STC. No.176 of 2015 on the file of the Judicial Magistrate No.I,
Tiruvannamalai.

2. Heard Mrs.J.Sundarakanchani, learned counsel for the
petitioners and Mr.P.Kannan for the second respondent.

3. Thirumoorthy married Sumathi on 07.09.2014 in
Tiruvannamalai. After marriage, he stayed with her in her natal

home till 11.09.2014, during which time, they had such serious differences, that he parted company with her and returned to his home in Chennai on 12.09.2014. Thirumoorthy filed HMOP.No.160/2014 in the Sub Court, Kanchipuram, on 11.10.2014, for declaring the marriage as null and void. Sumathi filed HMOP.No.1/2015 on 05.01.2015 in the Sub Court, Tiruvannamalai for restitution of conjugal rights. Thereafter, Thirumoorthy filed Tr.CMP.No.183 of 2015 before this Court to transfer HMOP.No.1/2015 to the Sub Court, Kanchipuram, to be tried along with HMOP.No.160/2014.

4. It is the case of Thirumoorthy that Sumathy had confessed to him on the first night that she had taken "rubella vaccine" and that she has been medically advised to refrain from sex. Thereafter, Thirumoorthy learnt that Sumathy was incapable of consummation due to her medical condition. Hence, as stated above, he filed HMOP No.160/2014, for declaring their marriage null and void.

5. In the meanwhile, Sumathy also filed Tr.CMP.No.196/2015 for transferring HMOP No.160/2014, from the Sub Court, Kancheepuram to the Sub Court, Tiruvannamalai, to be tried along with HMOP.No.1/2015.. Both the transfer petitions (Tr.CMP Nos.183 & 196 of 2015) were heard together and this Court, passed the following order on 22.04.2015:

" Since health issue is involved in this case, this Court directed both the parties to submit them for medical examination by a Sexologist, however, the Doctor has sought for Court order.

In view of the above, the Doctor is requested to conduct examination and required test and counselling and thereafter send a report in a sealed cover.

Call on 03.06.2015."

6. It is represented that Sumathi did not subject herself to medical examination as directed by this Court. However, a common order was passed in both the transfer petitions, directing the trial Courts to transfer both the cases to the Family Court at Vellore. While this being so, Sumathi initiated proceedings in STC.No.176/2015 in the Court of Judicial Magistrate No.I, Tiruvannamalai under the Domestic Violence Act, against Thirumoorthy and his family members, for quashing which, this criminal original petition has been filed.

7. Mrs.J.Sundarakanchani, learned counsel for the petitioners drew the attention of this Court to the categorical statement of Sumathy in the D.V. Petition that, after marriage,

Thirumoorthy lived with her only for 4 to 5 days in her house. It may be necessary to extract the said averments :

“திருமணமாகி 4, 5 நாட்கள் மட்டுமே என் கணவர் எங்கள் வீட்டில் என்னோடு தங்கினார். நான் ஒரு நாளும் எனது கணவர் வீட்டில் தங்கவில்லை. எனது வாழ்க்கையை நாசப்படுத்திவிட்டார்கள்.”

8. Mr.P.Kannan, learned counsel appearing for Sumathi, took this Court through Section 2(s) of the Domestic Violence Act and submitted that the house of Sumathy, where Thirumoorthy lived with her for four days would undoubtedly be a shared household and therefore, the relief prayed for by Sumathy in the D.V. Petition is maintainable. The learned counsel also submitted medical records to show that Sumathi is not incapable of having sex.

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

10. In the D.V. Petition, Sumathi has claimed various reliefs under Section 19(1) of the Domestic Violence Act, 2005, which in the opinion of the Court, cannot be granted, on the ground that Sumathi had not lived with her husband Thirumoorthy, either in the house of her in-laws or separately and as admitted by her, she stayed only in her natal home. Even according to Sumathi's statement, Thirumoorthy lived with her in her natal house only for 4 or 5 days after marriage, and thereafter, he left her company. In the said scenario, the natal home of Sumathi, can by no stretch of imagination, be considered as a shared household, for granting relief under Section 19(1) of the D.V.Act, because she is already staying in her natal house and there is no threat from anyone, more so from Thirumoorthy or his family members of dispossession. Since, the issue in the proceedings is not with regard to her physical fitness for having sexual relationship with her husband Thirumoorthy, this Court is of the view that there is no necessity to discuss that matter and give a finding to it.

11. In the result, this petition is allowed and the proceedings of STC.No.176 of 2015 on the file of the Judicial Magistrate No.I, Tiruvannamalai, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

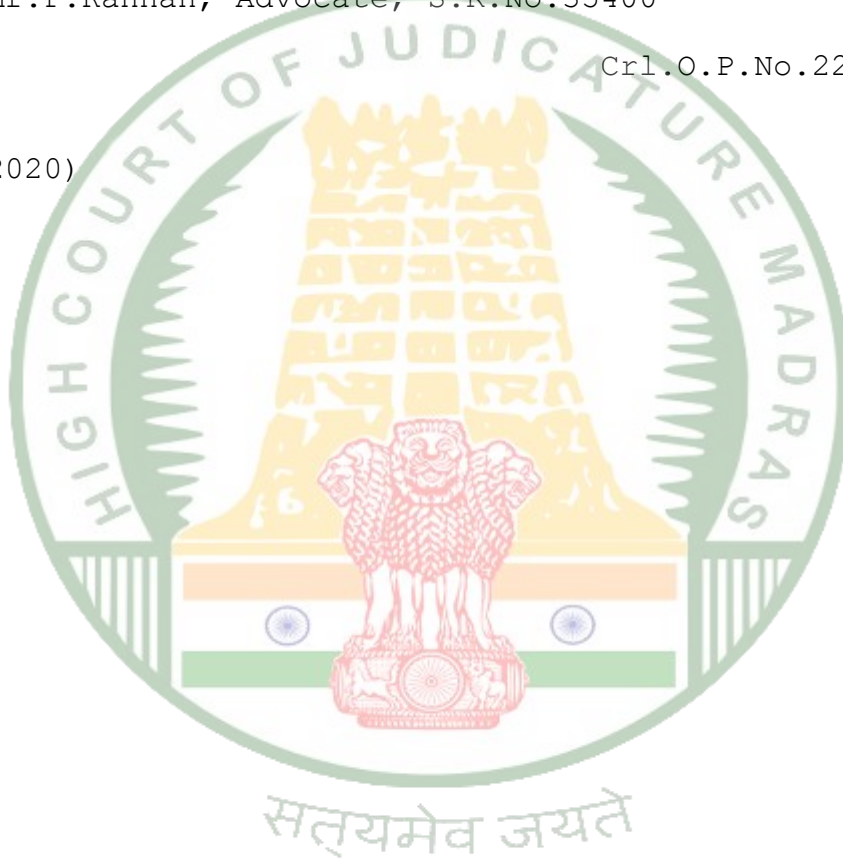
1. The Judicial Magistrate No.I
Tiruvannamalai.
2. The Inspector of Police
All Women Police Station, Tiruvannamalai.
3. The Public Prosecutor,
High Court, Madras.

+2 ccs to M/s.J.Sundarakanchani, Advocate, S.R.No.35093

+1 cc to Mr.P.Kannan, Advocate, S.R.No.35400

Cr1.O.P.No.22976 of 2015

UM(CO)
RV(09/12/2020)



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