

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2020

PRONOUNCED ON : 13.03.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1044 of 2011
& M.P.No.1 of 2011 and 2 of 2012
AND
Contempt Petition D.No.40236 of 2011

CRL.R.C.No.1044 of 2011

G.Balachandran ... Petitioner/Respondent

Vs.

B.Bhuvaneswari ... Respondent/Complainant

Crl.R.C.No.1044 of 2011 : Criminal Revision preferred under Section 397 read with 401 Cr.P.C. to set aside the judgment and order dated 09.04.2009 passed by the Judicial Magistrate No.I, Tirupur in M.C.No.34 of 2008.

Contempt Petition D.No.40236 of 2011

G.Balachandhran .. Petitioner

Vs.

1.Bhuvaneswari

2.Hon'ble G.Krishnan
The Presiding Officer
Court of Judicial Magistrate No.I
Tiruppur
Tiruppur District

3.Hon'ble Senthoo Pandian
The Presiding Officer
Court of Subordinate Judge
Tiruppur, Tiruppur District

.. Respondents

Prayer in Contempt D.No.40236/2011 : Contempt Petition filed under Section 11 of Contempt of Courts Act pleaded to take cognizance, Prosecute and punish the Respondent/Contemnors for having commission of contempt of High Court by disobeying the lawful order of this Hon'ble Court passed in Tr.CMP No.40/2009 dated 25/03/2009.

For Petitioner : Mr.G.Ravi Shankar
for Mr.J.K.Ezhilarasu

For Respondent : Mr.S.J.Mohamed Sathik
for Mr.N.Manokaran in
Crl.R.C.No.1044/2011
and first Respondent
in Cont.P.D.No.40236/2011

C O M M O N O R D E R

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

2. Bhuvaneswari hails from Tirupur District and Balachandran is from Chennai. Their marriage was arranged and solemnized on 06.10.2006 in Gobichettipalayam.

3. Balachandran's educational qualifications are M.A., B.L. After marriage, Bhuvaneswari lived with Balachandran in his house in Chennai, where she was subjected to torment and untold miseries. The nature of cruelty inflicted on her, will be discussed in the course of this order. Bhuvaneswari was chased out of the matrimonial home and she went back to her natal home on 15.05.2008.

4. Balachandran sent a legal notice dated 05.06.2008 (Ex.P2), in response to which, Bhuvaneswari sent a 16 page handwritten letter dated 18.06.2008, which was marked by Balachandran as Ex.R1 in the cross-examination of Bhuvaneswari, during trial. Balachandran filed a petition for divorce in H.M.O.P.No.69 of 2008 on 23.07.2008 in the Sub Court, Ponneri. However, on 24.07.2008, he went to Tirupur with his family members, in order to force Bhuvaneswari to submit to the divorce case and at that time, a quarrel ensued, on account of which, Bhuvaneswari went to the police station and lodged a complaint.

5. Bhuvaneshwari filed a petition in M.C.No.34 of 2008 before the Judicial Magistrate No.I, Tirupur under Section 125 Cr.P.C. against Balachandran. On receipt of notice in H.M.O.P.No.69 of 2008 that was filed by Balachandran for divorce in the Sub Court, Ponneri, Bhuvaneshwari filed Tr.C.M.P.No.40 of 2009 before this Court, for transferring H.M.O.P.No.69 of 2008 from the file of the Sub Court, Ponneri to the file of the Sub Court, Tirupur, to be tried jointly with M.C.No.34 of 2008. No notice was served on Balachandran in Tr.C.M.P.No.40 of 2009. However, this Court, by an order dated 25.03.2009 in Tr.C.M.P.No.40 of 2009, transferred H.M.O.P.No.69 of 2008 from the file of the Sub Court, Ponneri to the file of the Sub Court, Tirupur, to be tried along with M.C.No.34 of 2008 filed by her.

6. The legal problem arises here, inasmuch as M.C.No.34 of 2008 was not pending on the file of the Sub Court, Tirupur, but was pending on the file of the Judicial Magistrate Court No.I, Tirupur. The Sub Court is a civil Court and unlike the Family Court, it does not have the jurisdiction to entertain a petition under Section 125 Cr.P.C.

7. On coming to know of the order of transfer, Balachandran filed a transfer petition in Tr.C.M.P.No.176 of 2009 before this Court, for transferring H.M.O.P.No.69 of 2008 from the file of the Sub Court, Tirupur to the file of the Sub Court, Ponneri on the ground that he was not heard by this Court, when the order dated 25.03.2009 was passed in Tr.C.M.P.No.40 of 2009. This Court heard Balachandran and Bhuvaneshwari and by an order dated 18.09.2009, transferred H.M.O.P.No.69 of 2008 from the file of the Sub Court, Tirupur to the file of the Family Court at Coimbatore.

8. The enquiry in M.C.No.34 of 2008 began. Notice was served on Balachandran and he appeared before the Judicial Magistrate No.I, Tirupur on 06.02.2009. Thereafter, he did not appear before the Magistrate and therefore, on 29.04.2009, he was set ex parte and after recording the evidence of Bhuvaneshwari, the learned Magistrate passed an order directing Balachandran to pay Rs.2,000/- per month as maintenance.

9. Bhuvaneshwari filed an application in C.M.P.No.45 of 2010 under Section 128 Cr.P.C. for execution, in which, notice was issued to Balachandran, but he did not appear. Therefore, warrant was issued against him on 09.07.2010. On coming to know of it, Balachandran appeared before the Magistrate on 30.07.2010 and filed an application to set aside the ex parte order along with an application for condonation of delay.

10. The learned Magistrate condoned the delay and set aside the ex parte order and permitted Balachandran to contest M.C.No.34 of 2008. When Balachandran was asked to file his counter, he stated that he has already sent his written arguments by post under Section 314 Cr.P.C. to the Magistrate and that can be treated as his counter. Balachandran had

engaged Mr.M.Kannan as Advocate to defend him in M.C.No.34 of 2008, but the said Advocate withdrew his vakalat and Balachandran defended himself in the maintenance proceedings.

11. Bhuvaneswari was examined in chief as P.W.1 on 09.02.2011. Bhuvaneswari, in her evidence, has stated that, at the time of marriage, Balachandran represented that he is a B.B.A, C.A. and L.L.B. Graduate, but, later she came to know that it was false; at the time of marriage, a sum of Rs.4,00,000/- and 50 sovereigns of gold were given as dowry; only after marriage, she knew that he studied only B.B.A. and not B.B.A., C.A. and L.L.B.; within one month of her marriage, he pledged all her jewels in Tamil Nadu Co-operative Bank and they had gone unredeemed; he also purchased a property in his name in Balamurugan Nagar from her savings; since her father was suffering from diabetes, she wanted to go to Tirupur; he dropped her in Tirupur and asked her to be there for a month and suddenly, he issued a legal notice (Ex.P2) making serious allegations.

12. At this juncture, it may be relevant to discuss the legal notice (Ex.P2). This was not issued by any Advocate, but was issued by Balachandran himself and he has given the title to it as legal notice. Beneath the averments, he has signed as "G.Balachandran, petitioner". In that notice, he has alleged that Bhuvaneswari was suffering from asthma, pre-menstruation, stomach pain and vomiting while menstruation. He has further asked her to join him within 15 days, failing which, he would take appropriate legal proceedings against her.

13. Bhuvaneswari was subjected to a grilling cross-examination by Balachandran, as if it was a case of murder, on 15.02.2011, 17.02.2011 and 18.03.2011, running to 5 foolscap pages. In the cross-examination, she has stated the extent of torture she had undergone at the hands of Balachandran. When she was asked whether she was suffering from asthma, she stated that she had no such ailments, but, because of the torture given by him day and night, she became nervous and suffered debility and breathlessness.

14. Balachandran examined himself as R.W.1 and marked Exs.R1 to R4, of which, the important document is Ex.R1, which is a handwritten letter dated 18.06.2008 that was sent by Bhuvaneswari, in response to the legal notice (Ex.P2) that was sent by Balachandran. A reading of the said letter will melt even a stone heart, as she has given specific instances of the cruelty inflicted on her by Balachandran. For example, she has stated that while standing in the queue to have darshan in Tirumala, Balachandran had beaten her in public because, she was not moving fast as the queue progressed. In that letter, Bhuvaneswari has made a passionate request, "I request you not to reveal this letter to anybody." That is because, in that letter, she has disclosed several incidents that had occurred between them, when they were together for the brief period and

that, she did not want the world to know the true colours of Balachandran.

15. Balachandran filed an application under Section 45 of the Evidence Act in the maintenance proceedings, requesting the Court to send Bhuvanewari for medical examination, in order to find out, if she was suffering from 'deadly diseases'. The trial Court rightly rejected the petition.

16. The trial Court, by an order dated 09.04.2011 in M.C.No.34 of 2008, has awarded Rs.2,000/- per month as maintenance payable by Balachandran to Bhuvanewari. Challenging this order, Balachandran has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

17. Balachandran also filed a contempt petition under Section 11 of the Contempt of Courts Act to punish Bhuvanewari, the Judicial Magistrate No.I, Tirupur and the Sub Judge, Tirupur, for disobeying the order dated 25.03.2009 passed by this Court in Tr.C.M.P.No.40 of 2009. It is the allegation of Balachandran that after the maintenance case in M.C.No.34 of 2008 on the file of the Judicial Magistrate Court No.I, Tirupur was ordered to be heard along with H.M.O.P.No.69 of 2008 by the Sub Court, Tirupur, the Judicial Magistrate No.I, ought not to have proceeded with the enquiry of M.C.No.34 of 2008. The Registry felt that the contempt petition against a Judicial Officer was not maintainable and therefore, raised objection and has posted the case under the caption "for maintainability".

18. This Court heard Mr.G.Ravishankar, learned counsel for Balachandran. Balachandran was also present before this Court and interjected now and then. Mr.S.J.Mohamed Sathik was appointed by this Court today as counsel for Bhuvanewari.

19. A complete reading of the evidence on record shows that, after marriage, Bhuvanewari was subjected to extreme cruelty by Balachandran and in order to cover it up, he sent a legal notice (Ex.P2) to pre-empt Bhuvanewari from taking any action against him.

20. Learned counsel for Balachandran submitted that, when Balachandran and his family members went to Tirupur on 24.07.2008 to bring Bhuvanewari back, a police complaint was lodged by Bhuvanewari and Balachandran was illegally detained by the police. According to Bhuvanewari, Balachandran and his family members, did come to Tirupur on 24.07.2008, but they came there and asked her to give consent for divorce and when she resisted, they threatened her and therefore, she ran to the police station for protection. There appears to be a ring of truth in the statement of Bhuvanewari, because, even according to Balachandran, he had filed the divorce petition

in the Sub Court, Ponneri on 23.07.2008. Having filed the divorce petition, his assertion that he went on 24.07.2008 to request Bhuvaneshwari to join him, defies credulity.

21. In view of the above, this Court does not find any infirmity in the findings of the learned Judicial Magistrate No.I, Tirupur in M.C.No.34 of 2008, warranting interference.

22. As a result, this criminal revision stands dismissed with costs of Rs.25,000/- payable to Bhuvaneshwari. Connected miscellaneous petitions are closed.

23. Now, coming to the maintainability of the contempt petition in D.No.40236 of 2011, the order passed by this Court in Tr.C.M.P.No.40 of 2009 on 25.03.2009 became infructuous, pursuant to the subsequent order dated 18.09.2009 passed by this Court in Tr.C.M.P.No.176 of 2009. That apart, there is no material to show that the Judicial Magistrate No.I, Tirupur was aware of the order dated 25.03.2009 passed by this Court in Tr.C.M.P.No.40 of 2009. Further, the Sub Court has no jurisdiction to entertain a petition under Section 125 Cr.P.C. and therefore, the Magistrate cannot be faulted, for not transferring the case to the Sub Court, Tirupur in the facts and circumstances of this case. Balachandran has filed this contempt petition against the subordinate judicial officers only to harass and intimidate them.

24. As a result, contempt petition D.No.40236 of 2011 is dismissed as not maintainable with costs of Rs.25,000/- payable to the Tamil Nadu State Legal Services Authority, High Court Buildings, Chennai 600 104.

To sum up, the Criminal Revision is dismissed and the Contempt Petition is dismissed as not maintainable, with costs, as quantified in paragraph nos.22 and 24, respectively.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

gya

To

1 The Judicial Magistrate No.I
Tirupur

2 The Subordinate Judge
Tiruppur

3 The Member Secretary
Tamil Nadu State Legal Services Authority
High Court Buildings
Chennai 600 104

Copy To

1.The Section Officer,
Contempt Section,
High Court, Madras.

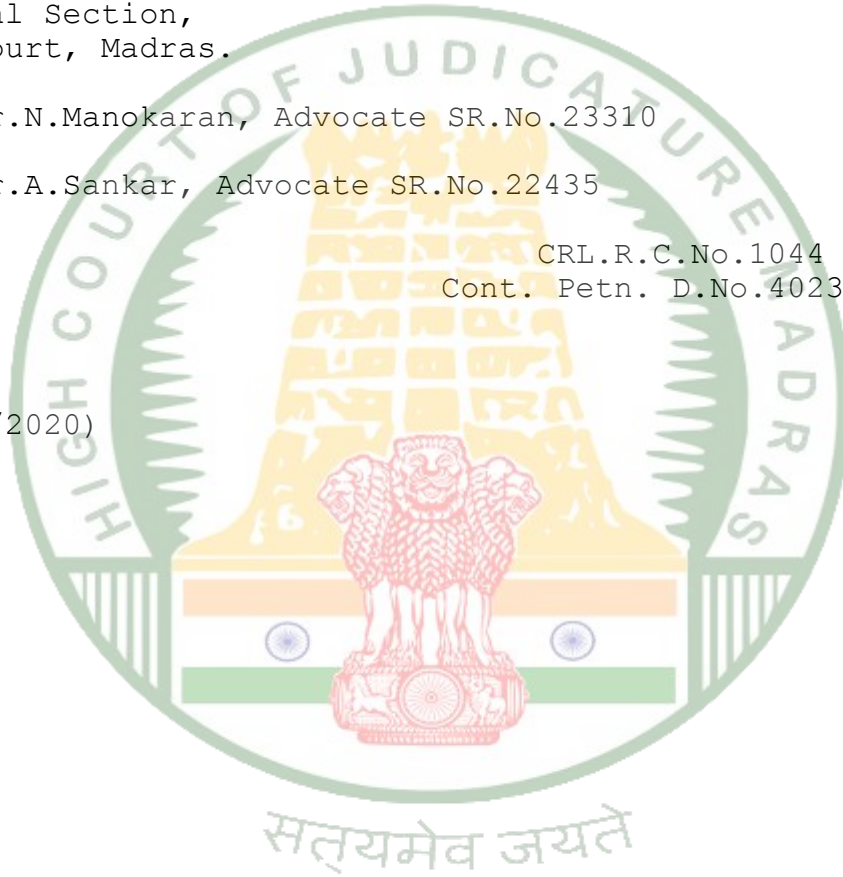
2. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate SR.No.23310

+2cc to Mr.A.Sankar, Advocate SR.No.22435

CRL.R.C.No.1044 of 2011 &
Cont. Petn. D.No.40236 of 2011

CRMR (CO)
GMY (27/07/2020)



WEB COPY