

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No. 1523 of 2017
and
C.M.P.No.8126 of 2017

A.Sudha

..Appellant

vs.

S.Ramesh Kumar

..Respondent

Appeal filed under Section 19 of the Family Courts Act against the judgment and decree dated 03.07.2015 made in F.C.O.P.No.182 of 2006 on the file of the Family Court, Salem.

For Appellant : Mr.V.Singan

For Respondent : No appearance

JUDGMENT

(Delivered by M.M.SUNDRESH, J.)

This appeal has been preferred by the respondent in F.C.O.P.No.182 of 2006, aggrieved over the decree granted for divorce by the Family Court, Salem on the ground of cruelty.

2.The marriage between the appellant and the respondent was solemnised on 23.05.2004 and a child was born on 07.04.2005 out of the wedlock. Alleging that the appellant has committed illegal act including the illicit relationship with the wife of named person, the appellant gave the complaint. The complaint has been registered in Crime No.15 of 2006. Pursuant to the

registration of the case, the respondent was arrested and after the investigation, charge sheet has been laid.

3.The jurisdictional Court viz., Judicial Magistrate Court, Thuraiyur in C.C.No.103 of 2007 acquitted the respondent by the judgment dated 21.01.2013, which has been marked as Ex.P7. Needless to state that even the father of the respondent has been arrested.

4.The Family Court took into consideration Exs.P4 to P7 granted a decree for divorce on the ground of cruelty. Challenging the same, the present appeal has been filed.

5.Heard the learned counsel appearing for the appellant. Despite service of notice and the name of the counsel for the respondent having been printed in the cause list, there is no representation on behalf of the respondent.

6.Learned counsel appearing for the appellant submitted that mere giving criminal complaint cannot be a factor to grant divorce. The allegations made by the appellant are very serious. The allegations are also to the effect that the respondent forced her to have relationship with the third party, with whose wife, the respondent is alleged to be having relationship. It is only under those circumstances, she gave a complaint for the offence punishable under Sections 498A and 506(ii) IPC read with Section 4 of Dowry Prohibition Act. Therefore, the appeal will have to be allowed.

7.We have perused the judgment of the Family Court and the documents marked under Exs.P1 to P7. Ex.P4 is the complaint given in Crime No.15 of 2006. Even before that, the respondent sent legal notice to the appellant under Ex.P2. Therefore, the very complaint itself came into being after the legal notice sent by the respondent. Thereafter, both the respondent and his father were arrested. It was also published in the news paper under Ex.P6. Petition for divorce was filed on 04.09.2006, which is also prior to the complaint given. As per Ex.P7, all the accused including the respondent were acquitted. However, damage has been done in the interregnum, not only the respondent but also his father was arrested. As stated, even before such arrest, the respondent sent a legal notice Ex.P2 dated 12.08.2006 and filed a petition for divorce on 04.09.2006.

8.In such view of the matter, we do not find any error in the order passed by the Family Court. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi

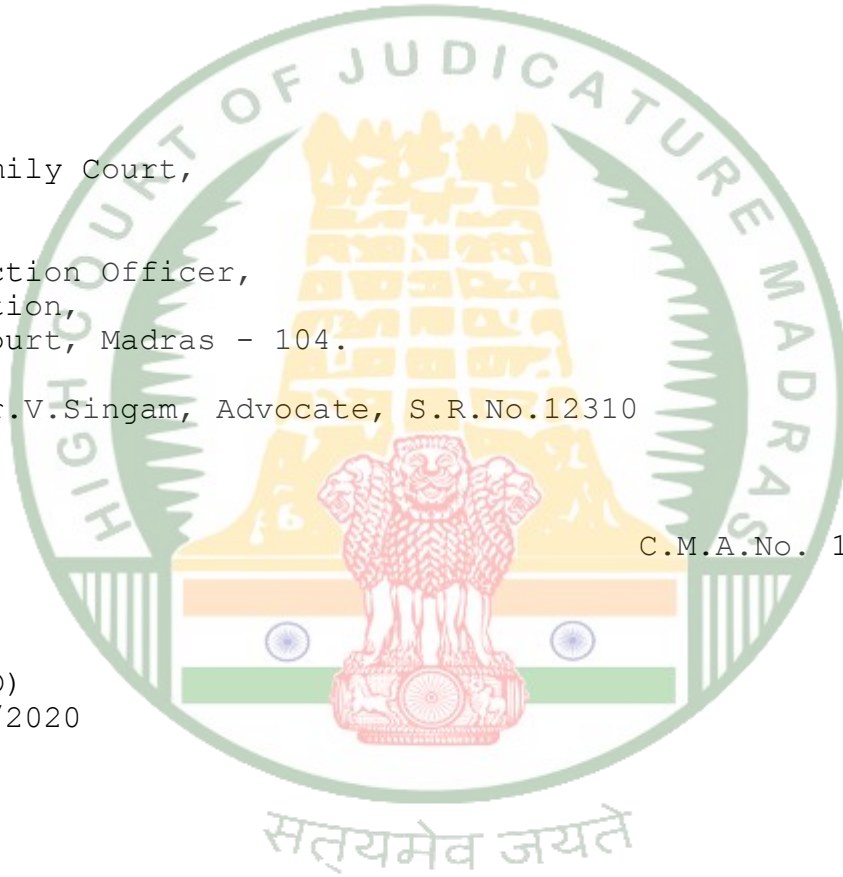
To

1. The Family Court,
Salem.
2. The Section Officer,
VR Section,
High Court, Madras - 104.

+1cc to Mr.V.Singam, Advocate, S.R.No.12310

C.M.A.No. 1523 of 2017

VSN II (CO)
KKV/17/07/2020



WEB COPY