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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.09.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.OP.No.16770 of 2016 & Crl.MP.No.8089 of 2016

[Video Conferencing]

1.Sathish Babu
2.Nandogopal
3.Devika

...Petitioners/A1 to A3

Versus

1.State Rep by Inspector of Police,
B9, Saravanampatti Police Station,
Coimbatore.

2.Uthra

... Respondents/Complainant

Prayer : - Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.115/2016 on the file of the Learned Judicial Magistrate No.II, Coimbatore and quash the same.

For Petitioners : Mr.R.Karthikeyan

For R1 : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

I think it would be a futile exercise to keep the present petition on the board of this Court for another five years since, there appears to be a remote possibility of the 2nd respondent ever appearing before this Court. The present petition has been filed seeking to interfere with further progress in C.C.No.115 of 2016 pending on the file of the Judicial Magistrate No.II, Coimbatore and to quash the same.

2.The said calendar case had been taken cognizance by the learned Judicial Magistrate No.II, Coimbatore, under Section 75 (i)(c) of the Tamil Nadu City Police Act, also incidentally under Sections 323 and 506(i) of IPC.



3. Notice had been directed to the 2nd respondent and the name address of the 2nd respondent is also printed in the cause list. There is no appearance on behalf of the 2nd respondent.

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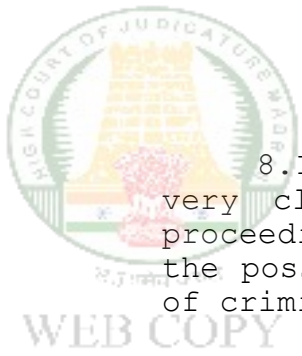
4. However, Mr. E. Raj Thilak, learned Additional Public Prosecutor, had forwarded a copy of the order of the Principal Family Court at Coimbatore in H.M.O.P.No.1197 of 2014 dated 07.04.2017. The said original petition had been filed by the 2nd respondent herein as against the petitioner / her husband under Section 12(1)(c) of the Hindu Marriage Act, 1955 seeking declaration that the marriage which had been solemnized between two of them to be declared as null and void. This fact itself means that the 2nd respondent had not recognized the marriage solemnized between two of them. She never recognized that the 1st petitioner was a lawful husband. She wanted to declare such marriage solemnized which had been conducted joining them as husband and wife to be declared as a void marriage.

5. Mr. R. Karthikeyan, learned counsel for the petitioner stated that after that, the 2nd respondent had moved away separately and the petitioners herein had not contacted her and that therefore continuation of the proceedings in the calendar case would only be a futile exercise as the charges therein can never be substantiated in view of the absence of the witness who has to speak about the charges.

6. As a matter of fact, in the very same order, it had been stated that the 2nd respondent agreed to withdraw the allegations made by her against the 1st petitioner. The manner in which she has decided to withdraw the petition is by abstaining from Court proceedings and I would respect that particular fact.

7. The Hon'ble Supreme Court in 2017 9 SCC 641, Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai Karmur and others V. State of Gujarat and Another, had given necessary principles which should be examined by the Court, wherein, the High Court can exercise its inherent power, interfere with proceedings to prevent and abuse of the process of the Court or otherwise to secure the ends of justice. Sub clause 9 of the principle laid down by the Hon'ble Supreme is as follows:-

"9). In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice."



8. In the above said principle, the Hon'ble Supreme Court had very clearly stated that the High Court may quash criminal proceedings in view of a compromise between the disputants and the possibility of a conviction becoming remote and continuation of criminal proceedings causing oppression and prejudice.

9. Continuation of further proceedings in C.C.No.115 of 2016 would certainly be a futile exercise, in view of the fact that the 2nd respondent had herself sought that the marriage between herself and 1st petitioner should be declared as null and void and actually also obtained such an order. She has also not appeared before this Court and even though notice had been served and also the name and address of the 2nd respondent had been printed in the cause list. The possibility of conviction of the alleged offence are therefore very very remote. Continuation of the proceedings would only be an oppression to the present petitioners.

10. In view of these facts, following the ratio in the judgment aforesaid, I would interfere with the further proceedings in C.C.No.115 of 2016 now pending on the file of the Judicial Magistrate Court No.II, Coimbatore. Hence, the present Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate No.II,
Coimbatore.

2. The Inspector of Police,
B9, Saravanampatti Police Station,
Coimbatore.

3. The Public Prosecutor
High Court, Madras.

+1 CC to Mr.R.Karthikeyan, Advocate sr 51104.

Cr1.OP.No.16770 of 2016

PA (CO)
SP(22/10/2021)