



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CrI.O.P. No.4555 of 2017
and
CrI. M.P. No.3418 of 2017

1. N. Kannan

2. R. Usha

...Petitioners

Vs.

P. Sudha

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order passed in C. A. No.195 f 2014 dated 22.02.2016 on the file of the learned XVI Additional Sessions Judge, Chennai confirming the order passed in C.C. No.3096 of 2010 dated 21.05.2012 on the file of the learned X Metropolitan Magistrate, Egmore, Chennai.

For Petitioners : Mr. K. Shivakumar

For Respondent : Mr. A. Tamilarasan

O R D E R

This Criminal Original petition has been filed under Section 482 Cr.P.C. seeking for to set aside the order passed in C. A. No.195 f 2014 dated 22.02.2016 on the file of the learned XVI Additional Sessions Judge, Chennai confirming the order passed in C.C. No.3096 of 2010 dated 21.05.2012 on the file of the learned X Metropolitan Magistrate, Egmore, Chennai.

2. The learned counsel for the petitioner would submit that the 1st petitioner got married the respondent herein on 12.06.2005 and they were living at Chennai. There was no issue out of the wedlock. Right from the marriage, the conduct of the respondent was not conducive. She was having illicit affair with one Prabakaran and hence there was incompatibility between the



1st respondent and the respondent herein. As a result of illicit relationship, the respondent is at present living separately with the aforesaid person by name Prabakaran. While being so, the respondent has filed a complaint before the Protection Officer and the same was referred to the learned X Metropolitan Magistrate, Egmore, Chennai which was numbered as C.C. No.3096 of 2010. The learned Magistrate, after hearing both sides, passed an order dated 21.05.2012 allowing the petition filed by the respondent and directed the 1st petitioner herein to provide alternative accommodation to the respondent herein and that the petitioners should not give torture either physically or mentally and further directed the petitioners to pay a sum of Rs.5,00,000/- towards compensation to the respondent herein for the marriage expenditure and the amount given for the house loan of the petitioners.

3. It has been further submitted that when the aforesaid case was pending before the X Metropolitan Magistrate, Egmore, the respondent has filed a divorce petition in O.P. No.2310 of 2011 before the II Additional Principal Judge, Family Court, Chennai and got an ex-parte decree of divorce on 15.10.2012. Even before filing of the aforesaid complaint under the Domestic Violence Act, the respondent has filed the above O.P.No.2310 of 2011 before the Family Court, Chennai and obtained ex-parte decree of divorce by order dated 15.10.2012. Before having obtained divorce order, the respondent has got married to one Prabakaran during the subsistence of the marriage between the 1st petitioner and the respondent herein.

4. The learned counsel for the petitioner would further submit that being aggrieved by the order of the learned Magistrate passed in C.C. No.3096 of 2011, the petitioners have preferred an appeal C.A. No.195 of 2014 before the learned XVI Additional Sessions Judge, Chennai. thereby the learned Sessions Judge confirmed the order of the trial Court by Judgment dated 22.03.2016.

5. It has been further submitted that on the date of passing the aforesaid order, the respondent got re-married one Prabakaran and she was living with him. The said fact was also brought to the knowledge of the lower Appellate Court. At that time, the respondent was very much available before the Court below wherein she was enquired by the learned Judge about the remarried and she also admitted of having got remarried with one Prabakaran. It was also brought to the notice of the Court below that the respondent has already obtained an exparte decree of divorce in F.C.O.P No.2310 of 2011 and subsequently got re-married with one Prabakaran. The illicit affairs of the respondent with one Prabakaran, was caused the incompatibility between the 1st petitioner and the respondent. Hence, both of



them have voluntarily decided to part ways and accordingly the terms have been reduced into writing by them whereby it was agreed that the party interested can approach the Court concerned for divorce. After having ex-parte order of divorce, the respondent got married to Prabakaran with whom she had illicit affair during the subsistence of the marriage between the 1st petitioner and the respondent. The lower appellate Court without considering the aforesaid vital factors which will have bearing on the case was pleased to confirm the order of the Trial Court by order dated 22.03.2016.

6. It has been further submitted that when the respondent already obtained ex-parte decree or divorce and got married to another man by name Prabhakaran, there is no question of providing alternative accommodation to the respondent arise. Without considering the aforesaid vital factors, the lower appellate Court was pleased to direct the petitioners to provide alternative accommodation to the respondent herein. Further, the dispute between the spouses arises on account of the illicit affair of the respondent with one Prabakaran, there is no question of awarding any compensation arise. Without considering the aforementioned aspect, the Lower Appellate Court was pleased to confirm the order of the Trial Court in C.A. No.195 of 2014 dated 22.03.2016 and the said order is bad in law and is not sustainable either in facts or in law. The same is liable to be set aside.

7. The learned counsel for the respondent would submit that the learned X Metropolitan Magistrate has passed the order dated 21.05.2012 after perusing the entire oral and documentary evidence let in by both parties allowing the petition in C.C. No.3096 of 2010 filed by the respondent herein. Thereafter the petitioners have preferred an appeal in C.A. No.195 of 2014 before the XVI Additional City Civil Court, wherein the aforesaid order dated 21.05.2012 has been confirmed by order dated 22.03.2016 after considering the facts and circumstances of the case and perusing the oral and documentary evidence placed by both parties. Hence, this Court may not interfere with the aforesaid orders passed by the Courts below.

8. Heard, the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent as well as perused the materials available on record.

9. On a perusal of the record, it has been reported in the averments of the respondent herein before the Court below that the petitioner husband is a habitual drinker and he was harassing and torturing the respondent for the past several years. The petitioners are root cause of all miseries, loss of peace of mind, mental agony. Sine the attitude of the



petitioner/husband has caused lot of mental and physical torture and cruelty to the respondent herein, she has filed a Divorce petition in O.P. No.2310 of 2011 before the IIIrd Additional Family Court. On the other hand, the petitioner husband has stated in this petition that the respondent wife had illegal relationship with one Prabakaran and she had married him. The same was accepted by her before the Lower Appellate Court. Under these circumstances, the respondent wife is not liable to the effect of the order passed by the Courts below.

10. Despite the averment made by the learned counsel for the petitioners with regard to re-marriage of the respondent wife with one Prabakaran, no substantial evidence has been placed before this Court as well as Courts below to prove the same. In the absence of substantial material in regard to the re-marriage of the respondent wife with one Prabakaran, this Court is not inclined to consider the submissions made by the learned counsel for the petitioners. Further, the Lower Appellate Court held that despite the divorce was ordered in favour of the respondent on 15.10.2012, the complaint made by the respondent well before the order of the Divorce ie. on 06.01.2011. Therefore, on the date of the complaint, the marriage was in subsistence. Hence, the relief sought by the respondent was granted by the Lower Appellate Court.

11. In view of the aforesaid discussions, this Court is not inclined to interfere with the orders passed by the Courts below as the contentions put forward by the learned counsel appearing on behalf of the petitioners are not proved by placing oral and documentary evidence before this Court and the same is purely factual in nature.

12. In the result, this Criminal Original Petition stands dismissed and the Orders of the Courts below are confirmed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

Lbm



To:

1. The XVI Additional Sessions Judge,
Chennai.
2. The X Metropolitan Magistrate,
Egmore, Chennai.
3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.A.Tamilarasan, Advocate, S.R.No.38197

Crl.O.P. No.4555 of 2017
and
Crl. M.P. No.3418 of 2017

NK(CO)
SU(17/09/2021)