



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CrI.O.P.No. 2847 of 2017
and CrI.M.P.Nos.2018 & 2019 of 2017

K.R. Murugan

... Petitioner

Vs

M.Jayanthimala

... Respondent

Criminal Original Petition filed under Section 482 of CrPC., to call for the records relating to the case in M.C.No. 21 of 2016 pending on the file of the Chief Judicial Magistrate Court, Krishnagiri and quash the same.

For Petitioner : Mr.K.G.Senthil Kumar

For Respondent : Mr.K.Thiruvengadam

ORDER

This petition has been filed to quash the proceedings M.C.No.21 of 2016 pending on the file of the Chief Judicial Magistrate Court, Krishnagiri, thereby taken cognizance for the offences under Sections 13(1)(i) and 13(1) (i-b) of the Hindu Marriages Act, 1955, as against this petitioner.

2. The learned counsel appearing for the petitioner would submit that the complaint as against the petitioner is false and frivolous and baseless. Since the petitioner had already obtained a decree of divorce u/s. 13(1) (i) (i-b) of the Hindu Marriage Act, on the ground of adultery ad desertion. As per Section 125(4) of CrPC., the respondent is not entitled to receive maintenance if she is living in adultery or if without any sufficient reason, she refuses to live with her husband. Although the respondent alleges in her petition that the petitioner had obtained the ex-parte decree by playing fraud



though the petitioner denies the same. He further submitted that the Court below failed to look into the petition in M.C.No.21 of 2016 in para 8 of the respondent has stated that she had filed a petition to set aside the ex-parte order dated 21.01.2013 in HMOP. No.358/2012, the respondent has not chosen to mark the same assuming but not admitting for a movement even if the respondent had filed the petition to set aside the order. Unless it is set aside by the competent court of law the respondent is not entitled to file this petition and the petition is not maintainable as per the Apex Court judgment reported in CDJ 2011 SC 819. Therefore, the complaint itself is false and frivolous against the petitioner. Hence he prayed to quash the same.

3. The learned counsel appearing for the respondent would submit that the trial has been commenced and some of the witnesses have been examined in this case.

4. Heard Mr.K.G. Senthil Kumar, learned counsel appearing for the petitioner and Mr.K.Thiruvengadam, learned counsel appearing for the respondent.

5. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.



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6. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in CrI.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

7. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in CrI.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents



for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

8. In view of the above discussion, this Court is not inclined to quash the proceedings in M.C.No.21 of 2016 on the file of the Chief Judicial Magistrate, Krishnagiri. The petitioner is at liberty to raise all the grounds before the trial Court. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

9. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

msm

To

The Chief Judicial Magistrate Court, Krishnagiri.

+1CC to M/s.K.G.Senthil Kumar, Advocate, SR.No. 39570

Cr1.O.P.No. 2847 of 2017
and Cr1.M.P.Nos.2018 & 2019 of 2017

RGN(CO)
B.VC (12/10/2021)