



Crl.R.C.No. 769 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2022

PRONOUNCED ON: 23.12.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.769 of 2021

A.Vijaya Kumar

...

Petitioner

/vs/

1.M.Revathi

2.P.Gunasekaran

3.K.Marimuthu

4.M.Lakshmi

...

Respondents

Prayer : Criminal Revision Case has been filed under Sections 397 & 401 of Criminal Procedure Code, 1973, to call for the records relating to the impugned and set aside the order dated 30.09.2021 passed in Crl.M.P.No.2491 of 2021 on the file of the Hon'ble III Additional District & Sessions Court, Coimbatore and consequently, to expunge the remarks made in page No.26 Para No.26 Line No.7, the word “integrity” in the common order pronounced in Crl.A.No.249/19, 250/19, 273/19 and 304/19 by the Hon'ble III Additional District and Sessions Judge, Coimbatore.

For Petitioner

...

Mr.H.C.Mohamed Rafi

For Respondent

...

No appearance

Nos.1 & 2



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ORDER

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The criminal revision case has been filed against the impugned order dated 30.09.2021 in Crl.M.P.No.2491 of 2021 on the file of the III Additional District & Sessions Court, Coimbatore and consequently, to expunge the remarks made in page No.26 Para No.26 Line No.7, the word “integrity” in the common order pronounced in Crl.A.Nos.249/19, 250/19, 273/19 and 304/19 by the Hon'ble III Additional District and Sessions Judge, Coimbatore.

2.The fact of the case is that the criminal revision petitioner (PW2) was a witness in C.C.No.74 of 2018 on the file of the Judicial Magistrate No.VI, Coimbatore. One Baba Natarajan Prasad had filed a private complaint against the respondents herein for the offences punishable under Sections 494, 497 r/w 109 IPC.

3.The trial Court, after trial, had convicted M.Revathi (A1) and P.Gunasekaran (A2) for the offences under Section 494 IPC and acquitted K.Marimuthu (A3) and M.Lakshmi (A4) for the offences under Sections



494 r/w 109 IPC. Against the finding of the trial Court, the complainant/Baba Natarajan Prasad and accused have filed the appeals in Crl.A.Nos.249 of 2019, 250 of 2019, 273 of 2019 and 304 of 2019 before the III Additional District and Sessions Judge, Coimbatore. The appellate Court finally allowed the appeals in C.A.Nos.249 of 2019 & C.A.No.250 of 2019 by setting aside the judgment of the trial Court in C.C.No.74 of 2018 dated 26.07.2019 and acquitted the accused and by confirming the judgment of the trial Court in C.C.No.74 of 2018 dated 26.07.2019, Crl.A.Nos.273 of 2019 and Crl.A.No.304 of 2019 were dismissed.

4.While deciding the criminal appeals, the appellate Court in its judgment in page 26, in para No.26, line No.7 observed against the Revision Petitioner (PW2) that he creates grave suspicion about his integrity. This observation is challenged and sought to expunge the word “integrity” from the judgment of the appellate Court by filing petition in Crl.M.P.No.2491 of 2021 before the appellate Court which was dismissed. Hence, the present criminal revision case has been filed.



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5.The learned counsel for the petitioner submits that the petitioner is a third party to the criminal complaint in C.C.No.74 of 2018 and he is an eye witness to the bigamous marriage. The petitioner is not concerned with the acquittal or conviction of the accused in the case. There is no contradiction or improvement in his evidence questioning his integrity. Since the appellate Court in its judgment suspect his integrity, his reputation in the society is Jeopardised due to stigma without any material evidence on record. Therefore, the word “integrity” suspecting his integrity is to be expunged.

6.In support of his argument, he placed reliance upon the judgment of the Hon'ble Supreme Court in ***Sri Abani Kanta Ray Vs. State of Orissa & Ors*** reported in ***1995 SCC, Supl.(4) 169***.

7.Notices were sent to the respondents and their names are printed in the cause list but no one appeared.



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8.I have considered the matter in the light of the submission made by the learned counsel for the petitioner and perused the judgment.

9.The appellate Court, while deciding the criminal appeal Nos.249 of 2019, 250 of 2019, 273 of 2019 and 304 of 2019 filed against the judgment of the trial Court in C.C.No.74 of 2018 dated 26.07.2019 on the file of the Judicial Magistrate No.VI, Coimbatore, observed adversely against the revision petitioner in its judgment dated 19.04.2021, in para 26, which runs as follows:

“26.Now these statements made by PW2 is held to be an improvement. Further PW2 during his chief examination has produced photographs allegedly taken by him in the form of CD which he has not produced while he deposed as CW5. The photographs are important documents to substantiate the complainant version. But the failure to produce the same earlier also creates doubt in his version. He has not even deposed during his statement as CW5 that he took photographs on 09.04.2017 and he has admitted this omission during cross examination. So, PW2's failure to



state that he took photographs after marriage on 09.04.2017 and subsequent function when he deposed as CW5 is also a material contradiction. It appears that he has made an improved version of his earlier statement. Above all at the time of his recall on 18.06.2019 he has produced the original photos taken by him in his mobile by producing his mobile phone. What prevented him from producing his mobile phone at the time of his examination as CW5 is not stated by him. So the improved statements and production of photos and mobile phone by PW2 creates grave suspicion about his integrity. The above contradictions pointed out by the accused creates a doubt in the mind of this court whether he really witnessed the marriage allegedly held on 09.04.2017.”

10.In this regard, the petitioner filed the impugned petition in Crl.MP.No.2491 of 2021 to remove the word “integrity” and the same was dismissed by the appellate Court. Hence, filed the present criminal revision petition.

11.The appellate Court, while passing the impugned order, justified its remark. I have considered the nature of the case and the findings of the trial



Court as well as the appellate Court. No doubt, the revision petitioner is PW2. In this case, he deposed before the Court about bigamous marriage conducted by M.Revathi (A1) and P.Gunasekaran (A2), this was believed by the trial Court but on re-appreciation, the appellate Court disbelieved his evidence.

12.The appellate Court, while re appreciating the evidence, may doubt about the truthfulness of the oral evidence and can suspect about the truthfulness of the oral evidence but there should be some material on record and there should be sufficient reason for suspecting integrity. In this case, it is absent. In this regard, the observation of the Hon'ble Supreme Court in ***Niranjan Patnaik Vs. Sashibhusan Kar and Ors.*** reported in **[1986] 2 SCR 470** is relevant. In this case, the Hon'ble Supreme Court observed that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case, as an integral part thereof. In the present case, the observation suspecting PW2's integrity is totally unjustified and unwarranted and it ought not to have been made.



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Therefore, it is liable to be expunged. Accordingly, the observation of the appellate Court in para – 26 of its judgment suspecting PW2's integrity is hereby expunged.

In the result, the Criminal Revision case is allowed. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes/No
Internet : Yes/No
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23.12.2022

To

The III Additional District & Sessions Court,
Coimbatore.

V.SIVAGNANAM ,J.

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Pre-delivery order made in
Crl.R.C.No.769 of 2021

23.12.2022