



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 04.02.2022

Delivered on : 18.02.2022

WEB COPY

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THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C. (MD)No.635 of 2016

M.Venkatesan

.. Petitioner

Vs.

D.Indra

.. Respondent

Prayer : This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., to call for the entire records pertaining to the order and judgment rendered by the Family Judge, Madurai District, in M.C.No.29 of 2014 vide his judgment, dated 21.04.2016 by set aside the same.

For Petitioner

: Mr.S.Sankar

For Respondent

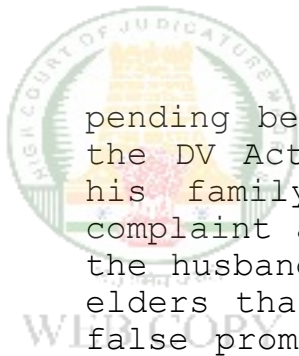
: Mr.M.Jeevanandam

ORDER

This revision has been filed to set aside the order passed by the Family Court, Madurai District, in M.C.No.29 of 2014, dated 21.04.2016. The revision petitioner herein is the husband and the respondent herein is the wife.

2. Brief substance of the petition, in M.C.No. 29 of 2014, is as follows:

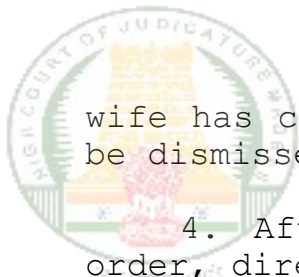
The marriage between the petitioner and the respondent took place on 13.07.2005, at the Murugan Temple, Tirupparankundram. They lived peacefully for a period of three months. Subsequently, due to the instigation of the family members, the husband left the wife at her parents' house. Without the knowledge of the wife, the husband by giving a false address, obtained an ex parte divorce order in H.M.O.P.No.156 of 2006. By getting the High Court order, the divorce petition was sent to the trial Court for fresh consideration. The petitioner filed a petition in H.M.O.P.No. 357 of 2007, for restitution of conjugal rights. On 22.01.2011, the divorce petition in H.M.O.P.No.156 of 2006 was allowed by the trial Court and the restitution of conjugal rights petition in H.M.O.P.No. 357 of 2007, was dismissed by the trial Court. The wife filed Appeals in CMA(MD) Nos.418 and 419 of 2011 and the appeals are



pending before the High Court. The petitioner filed a case under the DV Act. She lodged a police complaint against the husband and his family members. The husband and his sister also lodged a complaint against the petitioner. Due to the efforts of the elders, the husband and his family members, gave a false promise before the elders that both the husband and wife will live together. With the false promise, they obtained signature from the petitioner and her mother in various blank papers. On good faith, the petitioner withdrew the cases filed by her. After the withdrawal of the case, the husband refused to live with the petitioner. When the appeals are pending before the High Court, the husband got second marriage. But, the petitioner never had a second marriage. The petitioner sent a notice seeking maintenance from the husband. The husband sent a reply notice, wherein, it is stated that the petitioner has executed an agreement stating that she received a sum of Rs.1,00,000/- as permanent alimony. The husband by using the signature of the petitioner and her mother, in blank papers, has created some fake documents and prayed a sum of Rs.10,000/- per month to be awarded as maintenance.

3. Brief substance of the counter filed by the respondent, in M.C.No. 29 of 2014, is as follows:

The marriage is admitted. The petitioner lived with the husband only for a period of 20 days. She left the house, without informing her husband. She was living with somebody in Tiruppur. When a notice was sent calling her to live with the husband, she failed to return back to the matrimonial home. H.M.O.P.No.156 of 2006 was filed by the husband and notice was sent to the correct address. Since the wife did not attend the Court, exparte decree was passed in favour of the husband. The wife filed a case in H.M.O.P.No.357 of 2007 and a petition to set aside the exparte decree. The wife has filed more than 20 complaints in various police stations. She has filed a case in Crl.M.P.No.6646 of 2010, before the Judicial Magistrate No.IV, Madurai. Since the case was dismissed, the wife attacked her sister-in-law, and tried to murder her and a case was registered against the wife. The wife threatened her husband and her sister-in-law and a case in Crime No.392 of 2011 was registered against the wife. Subsequently, the wife received a sum of Rs.1,00,000/- and has executed a compromise affidavit, wherein, she has accepted the receipt of Rs.1,00,000/- and has accepted to withdraw all the cases filed by her. The husband also undertook to withdraw the case filed against the wife. Before the filing of this petition, the petitioner / wife was working in a Nursery School, now, she is working in Madurai Municipality. She is getting a salary of Rs.12,000/-. The respondent/husband is working in a private company as a salesman and is earning Rs.5,000/- per month and he has to maintain himself and his aged parents with this income. The wife, who deserted the husband cannot claim maintenance under Section 125 of Cr.P.C. Under Section 127 (3) (e) of Cr.P.C., it is not necessary for the husband to provide maintenance to a divorced wife. Only with a motive to grab money, the



wife has come forward with this petition and prayed the petition to be dismissed.

4. After hearing both sides, the trial Court has passed an order, directing the husband to pay a sum of RS.6,000/- per month as maintenance to the wife. Against the order, the husband has approached this Court by way of this revision.

5. On the side of the revision petitioner-husband, it is stated that the trial Court has failed to consider that it was the wife, who deserted the husband and that the wife has executed an agreement, wherein, she has admitted that she received Rs.1,00,000/- as permanent alimony. It is further stated that the wife married somebody else and there is no need for the petitioner-husband to pay maintenance for the wife, who married somebody else and prayed the impugned order to be set aside.

6. On the side of the revision petitioner-husband, it is stated that the alleged undertaking letter was marked before the trial Court as Ex.R17. The trial Court has failed to consider that it was the wife, who deserted the husband and that a deserted wife is not entitled for maintenance under Section 125 Cr.P.C. On the side of the respondent - wife, it is stated that it was the husband, who chased away the wife from the house and that there is no desertion.

7. On the side of the petitioner - husband, it is stated that the undertaking affidavit, marked as Ex.R17, clearly proves that the wife has accepted Rs.1,00,000/- as permanent alimony and she undertook to withdraw various cases filed by her. It is further stated that the withdrawal of the other cases itself reveals that the compromise agreement is a valid one. On the side of the respondent - wife, it is stated that stamp paper was purchased on 23.06.2012, but, the alleged agreement was executed on 20.06.2012, which is highly impossible and prayed that the petition is to be dismissed.

8. On the side of the revision petitioner-husband, it is stated that the document was dated 23.06.2012 and not on 20.06.2012. The wife got second marriage and she is not entitled for maintenance after the date of second marriage. On the side of the respondent-wife, it is stated that the petitioner / husband failed to prove that the respondent / wife married somebody else and prayed that the petition is to be dismissed.

9. Though more than 17 documents are available, the trial Court mentioned only 8 documents in its order. It is seen that there is some correction in the Tamil and English date mentioned in Ex.R17. The revision petitioner - husband has failed to prove the second marriage of the wife.



10. A perusal of the records reveals that the revision petitioner-husband failed to mark any document to prove the second marriage of the wife. Genuineness of document -Ex.R17 and the second marriage of the respondent are to be proved by the revision petitioner - husband.

11. In view of the same, this Court feels that the case is to be remitted back to the trial Court for deciding the issue afresh in accordance with law. Both the parties are permitted to mark additional documents and to adduce further evidence. Hence, this Criminal Revision Case is disposed of and the case is remitted back to the trial Court for fresh disposal in accordance with law.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Ls

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Judge,
The Family Court,
Madurai District.

COPY TO;

The Section Officer,
Criminal Section, (Records)
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.S.SANKAR, Advocate (SR-7294[F] dated 21/02/2022)

order made in
Crl. R.C.(MD)No.635 of 2016
18.02.2022

srr(CO)

GC(02.03.2022) 4P 5C

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