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Crl.OP.No.18993 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.18993 of 2022

and

Crl.M.P.Nos.12580 and 12581 of 2022

Madhan Kumar

... Petitioner

Vs.

Sumathi

... Respondent

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in M.C.No.3 of 2020, on the file of Learned District Munsif Cum Magistrate, Sriperumbudur, quash the same.

For Petitioner

: Mr.L.Mahandran

For Respondent

: Mr.D.Baskar

ORDER

This Criminal Original Petition has been filed to call for the records in M.C.No.3 of 2020, on the file of Learned District Munsif Cum Magistrate, Sriperumbudur, quash the same.



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2. The learned counsel for the petitioner submitted that there were multiple proceedings pending between the petitioner and his wife/ respondent.

In M.C.No.4678 of 2021 pending before the VI Additional Principal Family Court, Bangalore, the parties have submitted memorandum of settlement dated 13.12.2021 and prayed for adjudication of M.C.No.4678 of 2021. As per the memorandum of settlement recorded under Section 89 of CPC r/w rules 24 and 25 of Karnataka Civil Procedure (Mediation) Rules, 2005, petitioner and respondent have agreed to resolve the dispute on certain conditions. Some of the main conditions are :

“4. The 1st petitioner has agreed to pay a total sum of Rs.7,75,000/- (Rupees Seven Lakh Seventy Five Thousand Only) to the 2nd petitioner towards maintenance / permanent alimony as full and final settlement of all her claims. Out of which Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand Only) has already been paid by way of cheque bearing No.097494 dated 15.09.2021 draw on Central Bank of India, Seshadri Road 15.09.2021 drawn on Central Bank of India, Seshadri road Gandhinagar Branch, Bengaluru and the 2nd petitioner acknowledges the receipt of the same. The balance amount of Rs.6,00,000/- (Rupees Six Lakh Only) by way of cheque bearing No.097497 dated 13.12.2021 drawn on Central



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Bank of India, Seshadri Road Gandhinagar Branch, Bengaluru.

5. In view of the settlement arrived between the parties, the 2nd petitioner has agreed to cooperate to close/quash the criminal case in C.C.No.18277/2019 filed under Section 498-A of IPC and Section 3 & 4 of D P Act, which is pending before High Court of Karnataka, Bengaluru.

6. In view of the settlement arrived between the parties, the 2nd petitioner has agreed to withdraw DVC No.11/2019 which is pending before Judicial Magistrate, Sriperumpudur, Kanchipuram, and M C No.3/2020 which is pending before Judicial Magistrate, Sriperumpudur, Kanchipuram.”

3. It is submitted by learned counsel appearing for the petitioner that on the basis of this memorandum of settlement, a sum of Rs.7,75,000/- (Rupees Seven Lakhs Seventy Five Thousand Only) was paid to the respondent. The respondent turned hostile in C.C.No.18277 of 2019 and therefore the petitioner was acquitted in that case. As per the settlement DVC.No.11 of 2019 pending before the District Munsif cum Judicial Magistrate, Sriperumbatur and M.C.No.3 of 2020 pending before District Munsif Cum Judicial Magistrate, Sriperumbudur, Kanchipuram are to be withdrawn by the respondent. However, the respondent has not taken any steps for withdrawal of these proceedings.



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This petition is filed for quashing the proceedings in M.C.No.3 of 2020 pending on the file of District Munsif Cum Judicial Magistrate, Sriperumbudur, Kanchipuram.

4. In response learned counsel appearing for the respondent submitted that subsequent to the memorandum of compromise dated 13.12.2021, subsequent events had taken place, in which the petitioner has failed to perform his part of undertaking given. Therefore, the respondent is not able to co-operate in quashing of M.C.No.3 of 2020.

5. The subsequent events according to the learned counsel for the petitioner are:

(i) petitioner and his father and group and advocates represented that they will give divorce order copy only if the respondent return half of the cheque amount. The respondent left with no other option, had given Rs.1 lakh (Rupees One Lakh only) to the petitioner by cash. However, they immediately fled away and did not give the order copy.



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(ii) The efforts made by the respondent for getting the certified copy of the divorce order through her counsel was not successful for the reason that the petitioner and his advocate Mr.Ramesh made objections to the Registry not to give the copy stating that her counsel name was wrongly included.

(iii) On 18.05.2022, respondent was taken by Police to the Court, she turned hostile and the case was closed on 06.06.2022. On that date also, the petitioner failed to produce divorce order copy.

(iv) One Mr.Raja, contacted the respondent and represented that he is working as driver cum clerk under a Senior Advocate attached to Chamber 3 and he is more influential person and can get any orders from the Court. He threatened her to withdraw M.C.No.3 of 2020. He also represented that he will arrange payment of Rs.1,45,000/-(Rupees One Lakh forty five thousand only), towards maintenance arrears and also the certified copy of the divorce order and asked her to come on 22.07.2022. Believing his representation and to put an end to continuous trouble given by the petitioner, she went to Sriperumbudur Court on 22.07.2022.



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(v). Petitioner gave only the order copy, wherein she found that pages 1 and 2 were missing and it was only a notarised copy and not a certified copy. Thereafter, the petitioner took 25 days to produce certified copy of the order and the case was adjourned to 12.08.2022. The petitioner and said Raja represented that they will see that the respondent will not get the certified copy of the order and also not a single pie. Therefore the objection.

6. It is further submitted in the counter affidavit that this petition. may allowed subject to compliance of following directions to the petitioner.

“1. Directing the petitioner to produce the certified application copy of the divorce order in O.P.18993 of 2022.

2. Directing the petitioner to pay the sum of Rs.1,00,000/- which was forcibly taken by petitioner from respondent.

3. Directing the petitioner to pay the maintenance arrear amount Rs.45,000/- ”

7. Considered the rival submissions made by the counsel appearing for



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the parties and perused the materials available on record.

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8. It is seen from records that the petitioner and respondent entered into a memorandum of settlement under Section 89 of CPC r/w rules 24 and 25 of Karnataka Civil Procedure (Mediation) Rules, 2005. One of the terms of the settlement is to withdraw the M.C.No.3 of 2020 pending before the District Munsif Cum Judicial Magistrate, Sriperumbudur, Kanchipuram. In terms of settlement a sum of Rs.7,75,000/- (Rupees Seven Lakhs Seventy Five Thousand Only) was paid to the respondent. M.C.No.4678 of 2021 was disposed of by dissolving the marriage between the petitioner and the respondent and granting divorce by mutual consent. The petitioner was also acquitted in C.C.No.18277 of 2019 after the respondent failing to support the case of prosecution. What remains to be done as per the settlement is to withdraw DVC.No.11 of 2019 pending before the District Munsif cum Judicial Magistrate, Sriperumbatur and M.C.No.3 of 2020 pending before District Munsif Cum Judicial Magistrate, Sriperumbudur, Kanchipuram. Since the respondent has not co-operated for withdrawal, present petition is filed.



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9. It is seen from the counter and the submission of the learned counsel appearing for respondent, the reason for not withdrawing the M.C. case are

- (1) forcibly taking away of Rs.1 lakh (Rupees One Lakh Only)
- (2) non furnishing of order copy
- (3) non payment of Rs.45,000/- (Rupees Forty Five Thousand).

10. If petitioner has not supplied copy of the divorce order, it is always open to the respondent to approach the Court through the same Advocate or through different Advocate by filing appropriate copy application seeking copy of divorce order. Issuing copy is a matter between applicant and Court. With regard to forcible payment of Rs.1 Lakh (Rupees One Lakh Only) made, it is not supported by any materials like police complaint in this regard. It is not known how the petitioner can be made responsible for false promises given by one Raja. It is also not known that how the petitioner believed the representation of Raja that he would make arrangement for the payment of Rs.1 Lakh (Rupees One Lakh Only) and Rs.45,000/- towards maintenance and for certified copy.



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11. Thus this Court finds that grounds stated in the counter and submitted by the learned counsel for the respondent for not withdrawing the maintenance case is not legal and appropriate, especially when there is legal settlement recorded under Section 89 of CPC r/w rules 24 and 25 of Karnataka Civil Procedure (Mediation) Rules, 2005.

12. This Court finds after entering into settlement under Section 89 of CPC r/w rules 24 and 25 of Karnataka Civil Procedure (Mediation) Rules, 2005 and obtaining divorce by mutual consent, the refusal on the part of the respondent for the withdrawal of M.C.No.3 of 2020 is against the spirit of settlement. If their conduct is permitted, the very purpose of alternative dispute redressal mechanism would be defeated.

13. In this view of the matter, this Criminal Original petition is allowed, in view of the settlement reached between the parties under Section 89 of CPC r/w rules 24 and 25 of Karnataka Civil Procedure (Mediation) Rules, 2005, M.C.No.3 of 2020 pending on the file of Learned District Munsif cum



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Magistrate, Sriperumbudur, is quashed. Consequently, connected
miscellaneous petitions are closed.

23.01.2023

Index : Yes / No
Speaking / Non Speaking order
Neutral Citation Case: Yes/No
RAP/ Sma

To
District Munsif Cum Magistrate, Sriperumbudur



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G.CHANDRASEKHARAN,J.

Rap

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