



C.R.P.(MD)Nos.948 and 949 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserving the Judgment	Date of Pronouncing the Judgment
31.03.2023	30.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)Nos.948 and 949 of 2020

and

C.M.P.(MD)Nos.6159 and 6160 of 2020

C.R.P.(MD)No.948 of 2020:-

K.Prabhakar

... Petitioner

vs.

1.T.Arunachalam

2.Devanai @ S.Srividya

3.S.Bharathidasan

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike of I.A.No.2 of 2019 in H.M.O.P.No.172 of 2012, on the file of the Principal Subordinate Court, Tiruchirappalli.

For Petitioner

: Mr.Ramesh

For 1st Respondent

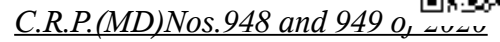
: Mr.R.Varadharaj

For 2nd Respondent

: Mr.V.Meenakshisundaram

For 3rd Respondent

: Mr.H.Lakshmi Shankar



C.R.P.(MD)No.949 of 2020:-

S.Bharathidasan

... Petitioner

VS.

1.T.Arunachalam

2.Devanai @ S.Srividya

3.K.Prabhakar

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike of I.A.No.2 of 2019 in H.M.O.P.No.172 of 2012, on the file of the Principal Subordinate Court, Tiruchirappalli.

For Petitioner : Mr.H.Lakshmi Shankar

For 1st Respondent : Mr.R.Varadharaj

For 2nd Respondent : Mr.V.Meenakshisundaram

For 3rd Respondent : Mr.Ramesh

COMMON ORDER

By this common order, both the Civil Revision Petitions are being disposed of.

2. These two Civil Revision Petitions have been filed to strike of I.A.No.2 of 2019 in H.M.O.P.No.172 of 2012, on the file of the Principal Subordinate Court, Tiruchirappalli.



3. I.A.No.2 of 2019 in H.M.O.P.No.172 of 2012 filed by the first respondent herein under Section 150 & 151 of the Indian Evidence Act, 1872 to sent a report against the respective petitioners herein to the Bar Council of Tamil Nadu and Pudhucherry for their alleged misconduct during the cross-examination of the first respondent here in H.M.O.P.No.172 of 2012 before the Principal Subordinate Court, Tiruchirappalli.

4. The petitioners in C.R.P.(MD)Nos.948 and 949 of 2020 are the counsels, who appeared on behalf of the second respondent herein in H.M.O.P.Nos.172 of 2012. The said H.M.O.P.No.172 of 2012 was filed by the second respondent herein on 14.03.2012 before the Principal Subordinate Court, Tiruchirappalli, for dissolution of marriage solemnized between herself and the first respondent herein.

5. Thereafter, H.M.O.P.No.3199 of 2014 was filed by the first respondent herein before the learned III Additional Judge, Family Court, Chennai. The second respondent herein filed Tr.C.M.P.No.112 of 2016 before the Madras High Court (Principal Seat of this Court) to transfer H.M.O.P.No.3199 of 2014 to the Principal Subordinate Court, Tiruchirappalli. The Madras High Court (Principal Seat of this Court) by its order dated 23.03.2016, transferred H.M.O.P.No.3199 of 2014 to the Principal Subordinate Court, Tiruchirappalli. On its transfer, H.M.O.P.No.3199 of 2014 was re-numbered as H.M.O.P.No.187 of 2016.



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6. The first and second respondents are estranged husband and wife, who got married on 16.04.2000. They lived together despite their differences till 2011 and thereafter, parted with each other, by trading and levelling unsavory allegations against each other. Under the said circumstances, the second respondent first filed H.M.O.P.No.172 of 2012 before the Principal Subordinate Court, Tiruchirappalli. H.M.O.P.No.172 of 2012 has been filed by the second respondent for dissolution of the marriage on the ground of cruelty. In the heading to the petition, a reference was also made to Section 12(1)(a) of the Hindu Marriage Act, 1955.

7. The first respondent, on the other hand, filed H.M.O.P.No.3199 of 2014 on 14.08.2014, before the learned III Additional Judge, Family Court, Chennai, for dissolving the marriage on account of adultery between the second respondent and one B.Gajendran. H.M.O.P.No.3199 of 2014 was later transferred to Principal Subordinate Court to be tried along with H.M.O.P.No.172 of 2012, pursuant to the order passed by the Madras High Court (Principal Seat of this Court), in Tr.C.M.P.No.112 of 2016, on 23.03.2016 and was renumbered as H.M.O.P.No.187 of 2016.

8. While transferring H.M.O.P.No.3199 of 2014 from the file of the III Additional Judge, Family Court, Chennai, to the Principal Subordinate Court at



Tiruchirappalli, for being tried along with H.M.O.P.No.172 of 2012, the Madras High Court (Principal Seat of this Court) made the following observations in its order dated 23.03.2016:-

"9. The above said contention raised by the learned counsel for the first respondent cannot be countenanced for the simple reason that H.M.O.P.No.172 of 2012 came to be filed by the petitioner herein not for a declaration that her marriage with the first respondent is null and void, but for the dissolution of marriage by a decree of divorce under Section 13 of the Hindu Marriage Act. Of course, by over enthusiasm or by inadvertence, Section 12(1)(a) has also been noted as one of the provisions under which the relief was sought for. The inclusion of such a provision in the petition is no doubt redundant. Even the fact that a wrong provision has been cited will not disentitle the petitioner for the relief claimed, if the Court can treat the petition under proper provision and grant the relief."

9. It is the case of the first respondent before the Principal Subordinate Court, Tiruchirappalli in I.A.No.2 of 2019 that during the cross-examination of the first respondent, both the petitioners have asked few questions which according to the first respondent were unreasonable, scandalous and indecent and therefore, the petitioners were liable to be dealt under Section 150 of the Indian Evidence Act, 1872.

10. It is the case of the petitioners that they had not exceeded their brief

while cross-examining the first respondent on 01.10.2019. It is submitted that all the



questions, that were asked, were relating to the relevant facts as instructed by the second respondent.

11. It is submitted that the questions that were asked during the cross-examination of the first respondent on 01.10.2019 were also not objected to by the counsel, who appeared for the first respondent, though several other questions which were put against the first respondent were objected.

12. It is the further case of the petitioners that the first respondent failed to exercise the option under Order XVIII Rule 11 of C.P.C. at the time of cross-examination of the first respondent. It is submitted that the application filed in I.A.No.2 of 2019 under Sections 150 and 151 of the Indian Evidence Act, was nothing but an abuse of Court proceedings to bring disrepute to the counsels, who were engaged by the second respondent. It is further submitted that the second respondent had also not filed any application before the Trial Court to expunge the evidence recorded in H.M.O.P.No.187 of 2016 on 01.10.2019, which allegedly contains scandalous questions, while elucidating answers during the cross-examination of the first respondent.

13. It is further submitted that the second respondent has made several allegations questioning the first respondent's capacity and biological conditions and



his inability to have physical relationship and to consummate the marriage.

Therefore, all questions that were asked were relevant and cannot be termed to be scandalous for the purpose of Section 150 of the Indian Evidence Act.

14. That apart, it is submitted that the first respondent/husband filed I.A.No. 16 of 2014 in H.M.O.P.No.172 of 2012, on the file of the Principal Subordinate Court, Tiruchirappalli, praying to refer the wife/second respondent herein before the Medical Board for examination, to prove that the marriage was consummated. The said I.A. was dismissed by the Trial Court, against which, the first respondent/husband preferred C.R.P.(MD)Nos.1559 and 1560 of 2014 before this Court and this Court passed the following order:-

"In such circumstances, as directed in the above decision, this Court also is inclined to refer both the parties to the Dean of the Madras Medical College Hospital, who shall constitute a team of qualified doctors to test the potency of the respondent/husband and another team to medically examine the petitioner/wife as regards her virginity. The Dean after the completion of such examination shall get the report from the team and forward the same directly to the Principal Subordinate Judge, Tiruchirappalli by name for further proceedings in H.M.O.P.No.172 of 2012."

15. Pursuant to the said order, both the first and second respondents were directed to report before the Dean of the Madras Medical College Hospital.



16. It is further submitted that despite a categorical order, the first respondent failed to co-operate. It is submitted that while the second respondent/wife has undergone the medical examination before the Rajiv Gandhi Government General Hospital, Chennai -3 and the report was also submitted, the first respondent failed to subject himself to medical examination.

17. It is further submitted that though the reference to Section 12(1)(a) of the Hindu Marriage Act was deleted, the entire body of the petition in H.M.O.P.No.172 of 2012 deals with cruelty on account of inability of the first respondent in consummating the marriage on account of his biological conditions amounts to cruelty and therefore, the questions that were posed were legitimate questions as the first respondent failed to answer any of the questions that were put forward and replied stating that he had to refer to the medical records to give an answer.

18. It is further submitted that even though while passing the order dated 23.03.2016, in Tr.C.M.P.No.112 of 2016, transferring H.M.O.P.No.3199 of 2014 from the file of learned III Additional Judge, Family Court, Chennai, to the file of the Principal Subordinate Court, Tiruchirappalli, there is no direction to amend the petition and therefore, all the questions that were put against the first respondent were necessary to prove the case of the second respondent.



19. That apart, it is noticed that the first respondent/husband filed I.A.No.173 of 2016 before the II Additional Subordinate Court, Tiruchirappalli, seeking to make amendment of the pleadings. The learned II Additional Subordinate Judge, Tiruchirappalli, vide order dated 22.03.2017, dismissed the said application and no further revision has been filed against the said order.

20. The second respondent/wife filed I.A.No.99 of 2016, praying to refer the first respondent/husband to a medical board for an examination as to whether he was affected by Klinefelter's syndrome. The said I.A. was dismissed by the Trial Court, against which, the second respondent/wife preferred C.R.P.(MD)No.1181 of 2017 before this Court and this Court, vide order dated 29.01.2018, dismissed the said Civil Revision Petition. S.L.P. filed against the order dated 29.01.2018 was also dismissed by the Hon'ble Supreme Court.

21. In support of the above submissions, the learned counsel for the petitioners relied on the following judgments:-

a) Privilege of a Lawyer:-

- i. **Munster vs. Lamb** reported in 1884 Vol. 32, Page No.12
- ii. **Sullivan vs. Norton** reported in I.L.R. Vol. X (1886) Page No.28
- iii. **In re G.Vasanthai Pai** reported in 1960 AIR (Mad) 73
- iv. **Prakash Rajaram and others vs. State of Maharashtra** reported in 1975 Cri. L.J. 1297 : 1974 Supreme (Mah) 38
- v. **K.Daniel vs. T.Hymavathy Amma** reported AIR 1985 Ker 23



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vi. **M.L.Ganesh vs. CA.V.Venkata Siva Kumar**
[Crl.O.P.Nos.4669 and 5115 of 2020, dated 30.09.2020]

WEB COPY b) Impotency leads to cruelty:-

- i. **Sirajmohmedkhan Janmohamadkhan vs. Hafizunnisa Yasinkhan and another** reported in 1981 AIR [SC] 1972
- ii. **Srikant Rangacharya Adya vs. Anuradha** reported in AIR 1980 Kant 8.

22. The present Civil Revision Petitions have been presented by the respective petitioners on 29.10.2020 and were thereafter filed on 27.11.2020 and listed for admission on 10.12.2020.

23. Though elaborate arguments were advanced on eight side in favour of and against the relief sought for in the present Civil Revision Petitions, it is noticed that this Court while admitting these Civil Revision Petitions was under impression that I.A.No.2 of 2019 in H.M.O.P.No.172 of 2012 was allowed by the lower Court as is evident from a reading of Paragraph 3 of the interim order dated 10.12.2020 which reads as under:-

3. Therefore, a the petition was filed by the husband in I.A.No.2 of 2019 in H.M.O.P.No.172 of 2012 with a prayer requiring the learned Family Judge to comply with Section 150 of the Indian Evidence Act, and send report against the Advocates for the wife to the Bar Counsel of Tamil Nadu and Puduchery for the professional misconduct. This was allowed by the learned Family Judge vide the impugned order.



24. In fact, before numbering these Civil Revision Petitions, the Registry has put a note as to how these Civil Revision Petitions were maintainable as admittedly I.A.No.2 of 2019 was yet to be enquired by the learned Principal Sub Judge, Tiruchirappalli. The petitioners appear to have convinced Court stating that I.A.No.2 of 2019 was abuse of process of law and therefore, this Court has power to entertain these Civil Revision Petitions. In this connection, a reference was made to the following three decisions:-

- i. **K.K.Modi Vs. K.N.Modi and others**, 1998(3) SCC 573.
- ii. **Lakshmi and others Vs. Prasanna mani and another**, 2011 (2) MWN(Civ) 363.
- iii. **N.Babu Vs. S.Shanmugam and others**, 2013 (1) CTC 180.

25. A verification of the status of the case in the E-Court Website indicates that the I.A. was pending before the learned Principal Sub Judge, Tiruchirappalli and at the stage of pronouncing orders, the petitioners had filed these Civil Revision Petitions before this Court. Further, the petitioners have also enclosed the Written Arguments filed by both the petitioner and the first respondent.

26. Thus, filing of the present Civil Revision Petitions are itself abuse of court proceedings. The petitioners being the members of bar ought not to have rushed to the Court although there were under risk of getting names represented to the Court or to the Bar Counsel of Tamil Nadu and Puducherry.



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27. Even if an opinion has to be formed, it is the Court which is seized of the case and has to form an opinion as to whether the questions that were put by the respective petitioners to the first respondent were scandalous, indecent and warranted action under Section 150 of the Indian Evidence Act, 1872.

28. Although under Section 151 of the Indian Evidence Act, 1872, the Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed, nevertheless, these are aspects which are to be decided by the Trial Court.

29. Section 149 of the Indian Evidence Act, 1872 itself contemplates a restriction. Section 149 of the Indian Evidence Act, 1872 reads as under:-

149. Question not to be asked without reasonable grounds.— No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

30. The learned Principal Sub Judge at Tiruchirappalli has all the records pertaining to the case and is fully well-versed in the facts of the case. Therefore, it is for the Principal Sub Court, Tiruchirappalli to pass appropriate orders in I.A.No.2 of



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2019. The petitioners cannot scuttle the proceedings particularly after participating in the same and filing written arguments before the learned Principal Sub Judge at Trichirappalli in I.A.No.2 of 2019 in H.M.O.P.No.172 of 2012.

31. More than 11 years have lapsed since H.M.O.P.No.172 of 2012 was filed along with H.M.O.P.No.187 of 2016 (formerly H.M.O.P.No.3199 of 2014). As both the husband and wife are interested in divorcing each other, it is not clear as to why despite the willingness of each of the parties to dissolve their marriage, the marriage has been prolonged.

32. In the light of the above discussion, I am inclined to these Civil Revision Petitions and direct the learned Principal Subordinate Judge, to dispose of I.A.No.2 of 2019, as expeditiously as possible, preferably, within a period of six weeks from the date of receipt of a copy of this order. Parties shall co-operate with the proceedings.

33. Since these Civil Revision Petitions themselves are abuse of court proceedings, cost has to be imposed on the petitioners. The petitioner in C.R.P.(MD) No.948 of 2020 shall pay a sum of Rs.5,000/- to the "Rojavanam Senior Citizens Care Centre, Uthangudi, Melur Road, Ulaganeri, Madurai - 620 020 and the petitioner in C.R.P.(MD) No.949 of 2020 shall pay a sum of Rs.5,000/- to the



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"Anbagam, Institution for the Mentally Handicapped Children, Race Course Road, Madurai", within a period of two weeks from the date of receipt of a copy of this order.

34. These Civil Revision Petitions are dismissed. No cost. Consequently, connected Miscellaneous Petitions are closed.

30.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

The Principal Subordinate Judge,
Tiruchirappalli.



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C.SARAVANAN, J.

smn2/jen

PRE-DELIVERY COMMON ORDER MADE IN
C.R.P.(MD)Nos.948 and 949 of 2020

DATED : 30.06.2023