



WEB COPY



Crl.M.P.(MD)No.12577 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04/12/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.MP(MD)No.12577 of 2023

and

Crl.RC(MD)No.518 of 2021

Sathyamoorthi : Petitioner/Respondent

Vs.

Arputhamary : Respondent/Petitioner

PRAYER:-Criminal Miscellaneous Petition has been filed under section 482 of the Criminal Procedure Code, to recall the order, dated 22/11/2022 in Crl.RC(MD)No.518 of 2021 and pass such further or other orders.

For Petitioner : Mr.N.Jayavel
for Mr.S.Jayakumar

For Respondent : Mr.G.Karuppasamy Pandian

O R D E R

This Criminal Miscellaneous Petition has been filed seeking recall of the order, dated 22/12/2022 in Crl.RC(MD)No.518 of 2021.



2.The facts need not be elaborated in view of the elaboration made in the original order during discussion.

3.This recall application has been filed mainly on the factual grounds, apart from some legal issues.

4.It is an admitted on both sides that they belong to different religion. One Hindu, another Christian.

5.As per the case of the respondent, she was married to the petitioner in a temple by tying thali. By pointing out this, it is argued by the learned counsel appearing for the petitioner that the marriage itself is not valid; since both belong to different religion; they can perform the marriage only as per the provisions of the Special Marriage Act, 1954. Marring an non-Hindu by knotting Thali is not a valid marriage. But this is a belated attempt on the part of the petitioner before this court that too at the time of recall petition. That ground, which ought to have been raised by the petitioner, either before the trial court or at the time of revision by properly engaging an Advocate. In both events, he failed.

6.Now this recall petition has been filed on the ground of nullity of marriage.



WEB COPY



Crl.M.P.(MD)No.12577 of 2023

7.A detailed discussion was made by this court in the revisional order over the legality, cohabitation and birth of the child, etc. So at this length of time, it may not be appropriate on the part of this petitioner to raise this plea. So this ground cannot be taken into account for recalling the order.

8.Now even more of less well settled to the effect that nullity of marriage even if it is declared by a competent civil court is not a bar for the wife to claim maintenance, here it is not a case of declaration. But it is a case of maintenance filed under section 125 of Cr.P.C. So the judgments cited by the petitioner reported in ***Gullipilli Sowria Raj Vs. Bandaru Pavani @ Gullipili Pavani (2009-1-SCC 714)*** may not have any effect upon the ultimate finding reached by this court.

9.Finally, he has submitted that there is no eye witness to the marriage. As mentioned above, this cannot be a ground for recalling the order. On the ground of long co-habitation, maintenance was ordered by this court.

10.But the learned counsel appearing for the petitioner would further submit that the revisional Court cannot re-appreciate the evidence. For that, he would



Crl.M.P.(MD)No.12577 of 2023

rely upon the decision of this court in the case of **Pathumma and another Vs. Muhammad (1982-2-SCC 585)**. The revisional court can exercise the power not on the ground of re-appreciation of evidence, but decided the maintenance petition on the ground of long co-habitation. The delay itself cannot be a reason for disqualifying the wife to claim maintenance. Circumstances may change as the age advance. At the advance stage of the age, the respondent filed a petition seeking maintenance. That was considered by this court and maintenance was ordered. If the petitioner got any grievance over that order, he ought to have taken the matter by way of proper proceedings. Without following the proper procedure, filing petition to recall the order itself is not at all maintainable.

11.Recall order will lie in certain circumstances. It is more or less now well settled by the Hon'ble Supreme Court in the case of **Daxaben Vs. The State of Gujarat and others** (2022 LiveLaw (SC) 642).

12.Let me extract the relevant portion.

“21.In **Krishna Kumar Pandey** (supra) this Court referred with approval, to the judgment of this Court in **State of Punjab v. Davinder Pal Singh Bhullar and Ors.**



WEB COPY



Crl.M.P.(MD)No.12577 of 2023

[(2011)14 SCC 770] where this Court held that the High Court was not denuded of inherent power to recall a judgment and/or order which was without jurisdiction, or in violation of principles of natural justice, or passed without giving an opportunity of hearing to a party affected by the order or where an order was obtained by abusing the process of Court which would really amount to its being without jurisdiction. Inherent powers can be exercised to recall such orders."

13.But none of the above grounds are available at this stage. So I am of the considered view that this petition is not maintainable and accordingly, it is liable to be dismissed.

14.In the result, this criminal miscellaneous petition is **dismissed**.

04/12/2023

Index:Yes/No
Internet:Yes/No

er

To,

The Family Court,
Sivagangai.



WEB COPY



CrI.M.P.(MD)No.12577 of 2023

G.ILANGOVAN, J

er

CrI.M.P (MD) No.12577 of 2023
and
CrI.RC (MD) No.518 of 2021

04/12/2023



WEB COPY



CrI.M.P.(MD)No.12577 of 2023