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Crl.M.P.(MD)No.13691 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated; 22/12/2023

CORAM

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

Crl.MP(MD)No.13691 of 2023

and

Crl.OP(MD)No.19355 of 2022

P.Prema : Petitioner/Respondent

Vs.

1.R.Maheshwari

2.R.Ramesh Kannan

: Respondents/Petitioners

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to recall the order, dated 14/07/2023 in Crl.OP(MD)No.19355 of 2023 passed by this court and pass such further or other orders.

For Petitioner : Mr.P.R.Prithivi Raj

For Respondents : Mr.R.Gowri Shankar

O R D E R

This criminal original petition has been filed seeking recall of the order of this court, dated 14/07/2023 in Crl.OP(MD)No.19355 of 2023.



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2.The case of the petitioner is that the petitioner's daughter namely Pradeepa is a divorcee. A2 is the sister-in-law of the petitioner. A1 is the husband of A2. The marriage proposal was made by A1 and A2, between the daughter of de-facto complainant and the son of A1 and A2 namely Tamilvel. At that time, she informed to A1 and A2 that Prathiba was already married and divorcee. So she was not willing for the above said marriage proposal. Suppressing that Tamilvel was also already married and divorcee, they continuously pressurised her for the marriage. Later, Prathiba agreed for the marriage. And the marriage was performed, on 11.02.2018 between Prathiba and Tamilvel. A male child was born to them on 05.09.2019. Later Tamilvel went abroad and died in Brunei. Till the death of Tamilvel, they were not informed about the first marriage of Tamilvel. Prathiba and her son was also not properly treated. The accused also refused to accept Prathiba and her son as the legal heirs of Tamilvel. When that was enquired, they were criminally intimidated. Only thereafter, the above said cheating came to their notice. At the time of registration of the marriage, a false certificate has been produced as if the marriage with Prathiba is the first marriage of Tamilvel. A1 and A2 also filed a complaint in Na.Ka.No.8594 of 2019 before



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the RDO, Sivagangai. They also filed O.S.No.43 of 2021 before the District Munsif court, Manamadurai stating that Prathiba is not the legally wedded wife of Tamilvel. Similarly, A3 filed OS No.64 of 2021 on the file of the District Court, Sivagangai. So with these allegations, the complaint has been filed for the offences punishable under sections 120(b), 417, 420, 466 and 468 of IPC and it was taken cognizance in CC No.65 of 2022 by the Judicial Magistrate, Devakottai. In the meantime, the petition was filed to quash the CC No.65 of 2022 by A4 and A5 and it was quashed by this court as against A4 and A5.

3.Against which, the petitioner has filed this petition seeking to recall the order, dated 14/07/2023 passed in Crl.OP(MD)No.19355 of 2023.

4.Heard both sides.

5.The original application was filed by the respondents herein seeking quashment of the proceedings in CC No.65 of 2022. Even though, this petitioner was served, she did not choose to appear before this court, either in person or through Advocate. So, her name was printed in the cause list.



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6.After hearing the learned counsel for the respondents herein, order was passed on merits. The reason for non appearance of this petitioner in the original petition is not satisfactorily explained by her.

7.It has been stated in the petition that being aged widow lady, she was not aware of the proceedings. She contacted one Advocate through his brother namely Sukumar; Later Sukumar died, on 28/11/2022. Then only, she approached the counsel; He promised her to take the legal proceedings. Believing the words of the counsel, she remained silent without any further course of action on her own. In these circumstances, the order passed without hearing the petitioner herein.

8.Even though the reason showing in the petition is not factually substantiated by producing the relevant records, the reason for recalling the petition must be addressed.

9.It is stated in the petition that by obtaining a false certificate over the marital status of Tamilvel from the Village Administrative Officer, Ariyankottai, Paramakudi Taluk, Ramanathapuram District, used the same as genuine document before the Sub Registrar, Devakottai



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for marriage. On the basis of the fake certificate, the marriage was registered, on 12/02/2018. In the marriage registration office, the accused persons stood as witnesses.

10.Tamilvel died in Brunei. A male child was born to Tamilvel and the daughter of this petitioner. During the course of the proceedings in O.S No.43 of 2021 on the file of the District Munsif Court, Manamadurai, it came to light that Tamilvel was already married one Suriya Ninanaley, on 11/01/2021. Later, they got divorce. That was suppressed at the time of arranging the marriage. This being the factual position now stated by the petitioner.

11.Para 12 of the original order reads as under:-

"12.In view of the above said circumstances, I am of the considered view that the parties must work out their remedy in the pending suits itself. No material has also been placed by the respondent before the trial court to show that a fraudulent document was created and filed before the Register of Marriage at the time of registration of the marriage between Prathiba and the deceased Tamilvel."



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12.The concluding portion in para 13 reads as follows:-

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"13.When it is an attempt with mala fide motive and mala fide intention, I am of the considered view that continuation of the proceedings against the petitioners will amount to abuse of process of court and law. On the sole ground, this petition is liable to be allowed leaving the parties to work out their remedy in the pending civil matters."

13.Now this observation made by this court is put into test by filing this recall application.

14.In view of the contention now raised by the petitioner, it must be thoroughly enquired.

15.Recall can be permitted on the following circumstances. In ***Daxaben Vs. The State of Gujarat and others, (2022 LiveLaw (SC) 642*** the Hon'ble Supreme Court held as follows:-

"21.In Krishna Kumar Pandey (supra) this Court referred with approval, to the judgment of this Court in [State of Punjab](#).



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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."

16. So I am of the considered view that this is the fittest case to recall the order. Since it has been brought on record by the petitioner that factual mistake is committed by this court, while making the order, as noted above, the petitioner ought to have appeared before the court and produce the relevant documents. But failure on the part of the petitioner should not cause any prejudice. On the sole ground to give due opportunity to put forth her contention, this petition is liable to be allowed.



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17.In the result, this Criminal Miscellaneous Petition is **allowed**. The order, dated 14/07/2023 passed in Crl.OP(MD)No.19355 of 2023 is hereby recalled and the above said matter is restored to file. For advancing the argument on both sides, positively post the matter on 09/01/2024.

22/12/2023

Index:Yes/No
Internet:Yes/No

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To,

The Judicial Magistrate Court,
Devakottai.



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G.ILANGOVAN, J

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