



C.M.A(MD)NO.1116 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.03.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATISH KUMAR

C.M.A(MD)No.1116 of 2022

and

C.M.P(MD)No.11385 of 2022

S.Aravind Peace Adhiban :Appellant/Respondent/Petitioner

.vs.

P.S.Minni Starina Evangelin :Respondent/Petitioner/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 55 of the Indian Divorce Act against the fair and decretal order made in I.A.No.4 of 2021 in I.D.O.P.No.150 of 2019, dated 25.08.2022, on the file of the Principal District Court at Tirunelveli.

For Appellant :Mr.Rajkumar Paul

For Respondent :Mr.K.Althaf Sheriff
for M/s.Ajmal Associates

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order passed by the Principal District Judge,Tirunelveli rejecting the



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application filed by the appellant for initiating the proceedings under Section 340 of the Criminal Procedure Code, for the alleged perjury.

2.The main ground on which the said application filed is that when the appellant has filed I.D.O.P for divorce before the Family Court, Thanjavur in I.D.O.P.No.101 of 2007, the respondent took a stand that she lived with her husband only in Vellur and Thoothukudi. Based on the above stand, the appellant filed I.D.O.P for divorce before the Court of Vellore and subsequently, the above said case has been transferred to the file of Principal District Judge, Tirunelveli and numbered as I.D.O.P.No.150 of 2019. In the meanwhile, the respondent also filed an application under the Domestic Violence Act before the Judicial Magistrate Court, Tirunelveli in D.V.C.NO.7 of 2017 and subsequently, it appears that the said proceedings was also transferred to the Principal District Court, Tirunelveli. When these matters are pending, an application is filed by the appellant before the Principal District Judge, Tirunelveli, for initiation of proceedings for the alleged perjury under Section 340 of Cr.P.C. The main ground in this application is that the respondent has taken a stand that except vellore and Thoothukudi, she has not resided in any other place with her



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husband, whereas, in the pleadings filed before the Family Court, Vellore, she had taken a different stand that she lived with her husband apart from vellore and Thoothukudi, also in Tirunelveli. Therefore, the Petition has been filed. The learned Principal District Judge, after analysing the various other factors, considering the statements of the parties given before the various other forums, one before the Judicial Magistrate Court and Family Court, Thanjavur and the Petition filed before the Family Court, Vellore, the Principal District Judge has come to the conclusion that those statements are inconsistent with each other. Mere inconsistent stand taken by the parties will not be sufficient to initiate proceedings and accordingly rejected the application. Challenging the same, the present Civil Miscellaneous Appeal is filed.

3.Mr.Rajkumar Paul, learned counsel appearing for the appellant mainly contended that the appellant having taken a stand that she never lived in Tirunelveli, other than Vellore and Thoothukudi, in the earlier proceedings, have filed DVC proceedings before Principal District Judge, Tirunelveli stated therein as if she has lived with her husband in Tirunelveli. That apart, for the first time, in Family Court, Vellore, a stand has been



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taken as if she has lived in Tirunelveli apart from Vellore and Thoothukudi. Hence his contention that when she has given one one kind of statement before one Court and making a different statement before another Court will clearly attract the case of perjury. To show a different stand taken by the appellant, she has relied upon the evidence given by the respondent before the Family Court, Thanjavur and also before the Judicial Magistrate Court at Tirunelveli. Hence this contention is a clear case of perjury and therefore, the order of the trial judge needs to be set aside.

4.Heard Mr.Rajkumar, learned counsel appearing for the appellant and Mr.K.Althaf Sheriff, learned counsel appearing for the respondent and perused the materials available on record.

5.I have perused the entire order and various proceedings. The main ground on which the action sought to be initiated under Section 340 of Cr.P.C is that the respondent/wife has given evidence in one of the proceedings between the parties that she lived only in Vellore and Thoothukudi. It is relevant to note that the earlier statements or evidence given by the living persons cannot be taken as evidence. These portions can be used only for



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the purpose of contradictions, to contradict the evidence in the subsequent proceedings. When the earlier proceedings have been contradicted before the learned judicial Magistrate Court, Tirunelveli, the respondent in fact, has given an explanation to the effect that she also lived in Tirunelveli and that due to typographical mistake, the error seems to have reflected in the typed-set, whereas, she has maintained a stand that she lived with her husband in Tirunelveli also. These aspects can be extensively cross-examined by the appellant. However, the evidence of P.W.1 in this regard could not be shaken. Be that as it may, even assuming that some inconsistent stand taken in the evidence, in two different proceedings, those evidence can be used for contradiction and used before the Courts at the time of appreciation of evidence while finally adjudicating the matter. Relationship between parties become strained to such an extent that they are not getting well for many years and many proceedings were initiated one after another. Therefore, such mere inconsistent statements will not mean that those statements have been given with an intention to attract the case of perjury. The learned District Judge has rightly relied upon the decision in the case of ***Veerappa Sivappa .vs. Krishna Triyambak reported in 1977 CRLJ 1367*** to the proposition that every incorrect or false statement does not make



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it incumbent on the Court to order prosecution. Similarly, the learned Judge has also relied upon the decision in the case of ***K.Gounden .vs. M.S.P. Rajesh reported in AIR 1966 SC***, the Honourable Apex Court has held that mere inconsistent or wrong statement are not good grounds to initiate the perjury proceedings against the respondent until the said statement was given by the person with an intention to affect the administration of the Court proceedings.

6.In such view of the matter, the inconsistent plea made either by the husband or wife in their matrimonial dispute in different Courts, this Court is of the view that those statements can be used only to discredit the witness in the appropriate issue which is pending before the concerned Court. Therefore, every inconsistent statement will not attract the prosecution. Hence, I do not find any merit in the appeal and the same is liable to be dismissed.

7.Accordingly, the Civil Miscellaneous Appeal is dismissed. The learned Principal District Judge, Tirunelveli is directed to expedite the trial of I.D.O.P.No.150 of 2019, on its file, as expeditiously as possible, preferably within a period of three



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months from the date of receipt of a copy of this order. No costs.

Consequently, connected Civil Miscellaneous Petition is dismissed.

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Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

1.The Principal District Judge,
Tirunelveli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATISH KUMAR.,J.

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JUDGMENT MADE IN
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