



Crl.O.P.No.7021 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2024

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.7021 of 2022

and

Crl.M.P.Nos. 3974 & 3975 of 2022

1.Suman

2.Palanichamy

3.Kalavathy

... Petitioners

Vs.

1.State Rep. by

The Sub- Inspector of Police,
W-26, Ashok Nagar Police Station,
Chennai.

Crime No.6 of 2019

2.B.Sindhu

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records relating to the impugned charge sheet in C.C.No.2328 of 2021 on the file of the Metropolitan Magistrate - XXIII, Saidapet, Chennai and quash the same.

For Petitioners : Mr.S.Arunkumar

For R1 : Mr.S.Vinoth Kumar

Government Advocate (Crl.Side)

For R2 : Mr.Subburam



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ORDER

This petition has been filed to quash the C.C.No.2328 of 2021 on the file of the Metropolitan Magistrate - XXIII, Saidapet, Chennai, in which cognizance was taken for the offence punishable under Sections 498(A) r/w 34 of IPC.

2. The learned counsel for the petitioners submitted that the defacto complainant filed the cases only to take revenge and plunder money from the 1st petitioner and his family members. Instead of attending the Court proceedings the defacto complainant left to Canada. Due to which he filed divorce petition before the learned VI Family Judge, along with reclaiming petition for his jewels and money spent on the car and its accessories and also filed a petition for visitation rights for his daughter.

3. The learned counsel for the defacto complainant submitted that the 1st petitioner is the husband of the defacto complainant and 2nd and 3rd petitioners are the in-laws of the defacto complainant. She is now staying in CANADA. He further submitted that the defacto complainant got married with the 1st petitioner on 20.01.2016 at Karkodi Amman Kovil,



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Nungambakkam, Chennai-600 034, as per the Hindu Religious Rites and Customs and it was registered on the same day in Series No.14/2016 and M.C.No.32 of 2016 under Tamil Nadu Registration of Marriage Act, 2009. Out of their wedlock, she blessed one female child who is aged about 5 years, now she is under the custody of the maternal uncle of the defacto complainant. Due to irreconcilable differences she left the matrimonial home with her child on 19.04.2019 and since they are living separately. Thereafter, she filed a petition for divorce in HMOP.No.3185 of 2021, on the grounds of cruelty and the same is pending before the learned VI Additional Family Judge, Chennai and the 1st petitioner also filed HMOP.No.4136 of 2022 on the ground of cruelty and the same also pending on the file of the Additional Family Court, Chennai. He further submitted that there is no scope for reunion, to that effect, she filed an affidavit and prays for divorce.

4. When the matter is taken up for hearing today, the 1st petitioner and the defacto complainant appeared through virtual mode. Affidavits were submitted by the respective counsel stating that they are not inclined to live together and sought Divorce. In spite of the mediation, there is no possibility



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of re-union, and both were submitted their consent for divorce. Due to employment of the defacto complainant, she is not able to attend the Court proceedings.

5. Considering the above facts of the case, as well as the ratio laid down by the Hon'ble Supreme Court in the case of Shilpa Sailesh vs. Varun Sreenivasan reported in [(2023 SCC online SC 544)] is extracted hereunder:-

50. In view of the aforesaid discussion, we decide this reference by answering the questions framed in the following manner:

(i) The scope and ambit of power and jurisdiction of this Court under [Article 142\(1\)](#) of the Constitution of India.

This question as to the power and jurisdiction of this Court under [Article 142\(1\)](#) of the Constitution of India is answered in terms of paragraphs 8 to 13, inter alia, holding that this Court can depart from the procedure as well as the substantive laws, as long as the decision is exercised based on considerations of fundamental general and specific public policy. While deciding whether to exercise discretion, this Court must consider the substantive provisions as enacted and not ignore the same, albeit this Court acts as a problem solver by balancing out equities between the conflicting claims. This power is to be exercised in a 'cause or matter'.

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(iii) Whether this Court can grant divorce in exercise of power under [Article 142\(1\)](#) of the Constitution of India when there is



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complete and irretrievable breakdown of marriage in spite of the other spouses opposing the prayer?

This question is also answered in the affirmative, inter alia, holding that this Court, in exercise of power under [Article 142\(1\)](#) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do 'complete justice' to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. The Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed."

6. Considering the above judgement and also there is no possibility of reunion of the relationship between them, therefore, this Court is inclined to grant divorce as there is no possibility of co-habitation between the husband and wife and also considering the affidavit filed by them, which is also recorded before this Court. The defacto complainant is also inclined to withdraw the proceedings in C.C.No.2328 of 2021 pending on the file of the Metropolitan Magistrate - XXIII, Saidapet, Chennai. Further more, the husband / 1st petitioner seeks visitation right of his minor child and the wife / defacto complaint raised informal objection. The child needs the love of both the father and the mother. As a father / Suman / 1st petitioner is also entitled to see the child and the child should not be deprived of the love and affection



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of her father. The father is given a visitation right to see his minor daughter who is in the custody of the parents of the defacto complainant / 2nd respondent twice in a month on the Saturday at 10.30 a.m. to 2.00 p.m in the care room of the Family Court, Chennai by giving prior intimation to the counsel of the defacto complainant.

7. Accordingly, this Criminal Original Petition is disposed of. Consequently, the connected miscellaneous petitions are closed.

14.03.2024

Index: Yes/ No
Neutral Citation: Yes/No
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To

1.The Sub- Inspector of Police,
W-26, Ashok Nagar Police Station,
Chennai.
Crime No.6 of 2019

2.The Public Prosecutor,
High Court of Madras.



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T.V.THAMILSELVI, J.

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