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C.R.P.No.2437 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2437 of 2024

Golda

... Petitioner

Vs.

M.Harikumar

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the learned Principal District and Sessions Judge, Vellore to number Spl.M.O.P.SR.No.2237 filed by the petitioner for divorce under Section 27(1)(d) of Special Marriage Act, 1954.

For Petitioner : Mr.A.Gouthaman

Amicus Curiae : Mr.N.Manoharan

ORDER

The petitioner/estranged wife of the respondent filed petition before the learned Principal District and Sessions Judge, Vellore under Section 27(1)(d) of the Special Marriage Act, 1954 seeking dissolution of the marriage between the petitioner and the respondent which took place on



C.R.P.No.2437 of 2024

19.06.2013 on the ground of cruelty. The divorce petition was returned with the following endorsement:

“(i)How this petition is maintainable under the Special Marriage Act, 1954 since the marriage of the petitioner and the respondent Registration under the Act, 2009 to be clarified.

(ii)Petition document No.22 has to be furnished,

(iii)Petition document No.23 necessary Court fee to be affixed.”

Against which, the present civil revision petition filed by the petitioner.

2.The learned counsel for the petitioner submitted that it has been mentioned clearly in the petition that both the petitioner and respondent belong to Christian Community and there is no legal embargo to entertain the petition under the Special Marriage Act, 1954. As per Section 15 of the Special Marriage Act, 1954, may be registered under this Chapter by marriage officer in the territories. Thus, the Principal District and Sessions Judge, Vellore failed to note certain conditions prescribed in Section 15 of the Special Marriage Act, 1954. He further submitted that the marriage



C.R.P.No.2437 of 2024

between the petitioner and respondent registered under the Tamil Nadu Registration of Marriages Act, 2009 and the marriage certificate issued vide Marriage Sl.No.52/2013 registering the marriage solemnized between the petitioner and the respondent on 19.06.2013. The learned Principal District and Sessions Judge failed to note that the Registration of Marriage under the Tamil Nadu Registration of Marriages Act, 2009 will be in addition to and not in derogation of any other law for the time being force. Added to it, the learned Judge failed to note that nowhere under the Special Marriage Act, 1954, it has been stated in order to maintain a divorce petition under the Special Marriage Act, the marriage ought to be registered under the Special Marriage Act. In this case, the marriage between the petitioner and respondent registered under the Tamil Nadu Registration of Marriages Act, 2009. On a demurrer submitted that in the event of divorce petition filed under Divorce Act, 1869 or Special Marriage Act, 1954, it is the Principal District Judge who has got jurisdiction to entertain the petition. In this case, admittedly, both the petitioner and respondent belong to Christians and they have no other choice except to approach the Principal District Judge. As per Section 13 of the Special Marriage Act, 1954 even after marriage, the same can be registered. In this case, after the marriage, dispute arouse between



petitioner and respondent, hence, there is no possibility to register the marriage under the Special Marriage Act, 1954.

3.He further submitted that the learned Principal District and Sessions Judge, Vellore failed to consider wrong quoting of provision of law is not fatal to the case. Added to it, the learned Judge failed to notify what is the remedy available to the petitioner for getting divorce before rejecting petition filed under the Special Marriage Act, 1954. Hence, the petitioner filed the present revision.

4.Considering the submissions and intricacies involved, this Court requested Mr.N.Manoharan, learned counsel to be Amicus Curiae to assist the Court.

5.Mr.N.Manoharan, learned counsel submitted that admittedly both petitioner and respondent are Christians and declared that the marriage solemnized on 19.06.2013 at No.105, Indira Nagar, Kalinjur Village, Katpadi Taluk, Vellore District and the same registered on 21.06.2023 at Serial No.52 of 2013 of Registrar of Marriages maintained under the Tamil



Nadu Registration of Marriages Act, 2009. He further submitted that the petitioner is the wife who filed divorce petition on the ground of cruelty against her husband/respondent. The admitted position is that the petitioner is employed as Staff Nurse in Pearl Ward, Armed Force Hospital, Alkhoud, Muscat, Sultanate of Oman. For this reason, she filed divorce petition under the Special Marriage Act, 1954 for dissolution of her marriage with the respondent. This might not be proper. In registration of marriage under the Special Marriage Act, 1954, certain conditions prescribed in issuance of notice, thirty days prescribed for receipt of objections if any, thereafter only marriage can be registered under the Special Marriage Act, 1954. In this case, admittedly, both the petitioner and respondent are Christians, got married and registered the same with the Registrar of Marriages. The proper position would be that the dissolution of marriage petition to be filed under the Divorce Act, 1896 not under the Special Marriage Act, 1954.

6.He further submitted that in the case of “*Seema (smt) v. Ashwani Kumar* reported in (2006) 2 SCC 578)”, the Hon'ble Apex Court held that in the interest of society marriages to be compulsorily registered. The effect of non-registration would be that the presumption which is available from



registration of marriages would be denied to a person whose marriage is not registered. In the case of “**Indira Rachel v. Union of India** reported in **MANU/TN/1821/2008**”, the Division Bench of this Court considered the validity of Section 2 of the Divorce Act, 1869, held that to entertain petition for dissolution of marriage whether either of the parties to the marriage is domicile in India at the time when the petition is presented and such position need not be construed as if both the parties must be domiciled in India at the time of presentation of the petition. It would mean that the petition would be maintainable if at the time of presentation of the petition either of the parties to the marriage is domicile in India. Finding that such controversy in matter may occur in different parts of the country, it had addressed Ministry of Law to consider the suitable amendment to the provisions in so far as Section 2 of the Divorce Act, 1869 is concerned. The Division Bench of Keral High Court in the case of “**James K.Avaran v. Jancy Ritamma George** reported in **MANU/KE/0988/2009**” it had gone one step further and decided that domicile by berth and domicile by choice. Further it had also referred “**Indira Rachel v. Union of India and Anr., in W.P.No.12816 of 1995, dated 17.11.2008**” and held District Judge has jurisdiction to consider the claim of the divorce as both parties to marriage was domicile in India at



relevant time *i.e.*, on the date of presentation of the petition. The Law Commission of India in its Report No.224 of June 2009 in view of the Division Bench order ***Indira Rachel*** case (cited above) considered Section 2 of the Divorce Act, 1869 and recommended that in so far as the jurisdictional Rule in regard to petitions for divorce is not in tune with the present times but is also harsh upon Christian Women in India. Thus the apprehension of the petitioner to file petition seeking divorce under the Divorce Act, 1869 that the the petitioner face obstacles since she is employed in Muscat, Sultanate of Oman is on a wrong notion. The petition under the Divorce Act, 1869, can be filed if one of the parties are domicile in India. The grounds raised by the petitioner would come within Section 10 of the Divorce Act, 1869. Admittedly, in this case, the respondent employed in the Public Works Department, Vellore and he is a domicile in India. In view of the same, the Divorce petition can be entertained by the learned Principal District and Sessions Judge, Vellore under the Divorce Act, 1869.

7.Considering the submissions and on perusal of the materials, it is seen that petitioner filed petition seeking divorce under the Special Marriage Act, 1954 and there is nothing to show that marriage between the petitioner



C.R.P.No.2437 of 2024

and respondent was registered under the Special Marriage Act, 1954. The Registration of Marriage between the petitioner and respondent registered under the Tamil Nadu Registration of Marriages Act, 2009 would not confirm the marriage between the petitioner and respondent registered under the Special Marriage Act, 1954.

8.In view of the above, this Court directs the petitioner to re-present the petition under the Divorce Act, 1869 before the concerned District Court who shall entertain the same if it is otherwise in order and dispose of the same in accordance with law.

9.Registry is directed to return all original papers (FN:OP/285/2024 TNVL010012692024) along with typed set to the learned counsel for the petitioner so that the same may be re-presented under the Divorce Act, 1869.

10.In the result, this civil revision petition stands disposed of. No costs.

11.I wish to commend the contribution by Mr.N.Manoharan, Amicus



C.R.P.No.2437 of 2024

Curiae in the matter by ably assisting the Court.

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05.07.2024

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index : Yes/No

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To

The Principal District and Sessions Judge,
Vellore.

M.NIRMAL KUMAR, J.

vv2

C.R.P.No.2437 of 2024



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C.R.P.No.2437 of 2024

05.07.2024