



Crl. R.C. No. 681 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated : 21.12.2024

Coram :

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No.681 of 2021

and

Crl. M.P. No. 11143 of 2021

- 1.S.Arumugam (Mentally disabled person)
Represented by father and natural guardian
Namely N.Selvaraj.
- 2.N.Selvaraj
- 3.Danamathi
- 4.Mani
- 5.Kalaivani

.. Petitioners

Versus

Divya Priya

.. Respondent

Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C seeking to call for the records on the file of the learned Additional Mahila Court (Magisterial Level), Thiruvannamalai in Cr.M.P.No.789 of 2021 in D.V.C. No. 4 of 2019, dated 27.09.2021 and set aside the same by allowing this Criminal Revision Petition.

For Petitioners

..

Mr.R.Singaravelan,
Senior Counsel
for M/s.V.Ambika

For Respondent

..

Mr.K.Govi Ganesan



ORDER

WEB COPY

This Criminal Revision Case had been filed against the order of the learned Judicial Magistrate, Additional Mahila Court (Magisterial Level), Thiruvannamalai in Cr.M.P.No.789 of 2021 in D.V.C.No.4 of 2019, dated 27.09.2021 and to set aside the same.

2. The Respondent herein has filed the Domestic Violence Case No. 4 of 2019 contending that she married the first Petitioner herein on 14.12.2011 and the marriage was solemnised at A.V.M. Thirumana Mahal, Kancheepuram as per Hindu rites and customs. It was stated that at the time of marriage, her parents have offered 13 sovereign gold jewels to her, 2 sovereign gold jewels to the first Petitioner and Rs.50,000/- for purchase of dresses. That apart, her parents have also gifted household articles worth about R.2 lakhs such as Cot, mixie, grinder. According to the Respondent, when she was studying under graduation, her marriage was solemnised. However, after marriage, her husband and in-laws refused to pay the fee for her studies and therefore, she could not continue her studies. It was also stated that due to such wedlock, a male child was born and he is named as Prithish Raj, aged 6 years at the time of giving the domestic violence complaint. The grievance of the Respondent is that even five years before the marriage, the first Petitioner-husband was



WEB.COM

taking medicines for his mental instability. The Respondent came to know about the insanity of the first Petitioner seven months after the marriage. It is her grievance that by suppressing his mental inability, the marriage was solemnised. When this was questioned, it was replied that if the Respondent wish to continue the matrimonial journey, she can stay in the matrimonial home or otherwise she can go. After staying in the matrimonial home for five years, the Respondent left the first Petitioner and staying in her parents house from 2016. Thereafter, the instant complaint was given by invoking the provisions of The Protection of Women from Domestic Violence Act.

3. Thiru. R. Singaravelan, learned Senior Counsel appearing for the Petitioners submitted that the Respondent herein filed the Petition under the provisions of The Protection of Domestic Violence Act clearly stating that her husband-the first Petitioner is suffering from mental ailments. She had already issued Lawyer's notice to the first Petitioner-husband stating that her marriage with the first Petitioner was solemnised by suppressing the mental illness of the first Petitioner, thereby, she was put to enormous mental agony and hardship. It is further stated by the learned Senior Counsel that when the Respondent was admitted in hospital for delivery, the first Petitioner had accompanied her to the Hospital. It is alleged that instead of taking care of the



WEB.COM

Respondent in the hospital, the first Petitioner had left her in the hospital without informing her. Similarly, it is alleged that when the Respondent visited the relatives house, the first Petitioner dropped the Respondent herein and the child on the mid-way. In similar incidents, it is stated that she suffered in many ways and at times, she was unable know the whereabouts of the first Petitioner herein. Therefore, she had filed Domestic Violence Case against her husband and in-laws seeking relief under Domestic Violence Act. The learned Senior Counsel for the Petitioners further submitted that under the Mental Health Act and the Criminal Procedure Code, the proceedings against a person of unsound mind is not maintainable. In those circumstances, the Petitioners have filed the petition for discharge. The learned Judicial Magistrate-I holding Full Additional Charge of Additional Mahila Court (Magisterial Level), Thiruvannamalai, however, rejected the petition stating that the first Petitioner is mentally fit person and his demeanor shows that he is not mentally fit person. Further, on 14.09.2021, when his Counsel was absent, the first Petitioner represented himself and had conversation with the Presiding Officer of the Court saying that he is conscious and his Counsel is making false information about his mental fitness and requested that he is willing to visit the minor son who is in the custody of his wife, once in a month. Also the learned Judicial Magistrate, in the same order, rejected the contention of the



CrI. R.C. No. 681 of 2021

WEB COPY

Petitioners to stop all further proceedings by observing that the learned Judicial Magistrate interacted with the first Petitioner and arrived at a conclusion that the queries raised by the learned Judicial Magistrate was properly answered and understood by the first Petitioner herein. Therefore, the first Petitioner herein is not a lunatic and the petition filed by the first Petitioner before the learned Judicial Magistrate-I holding Full Additional Charge of Additional Mahila Court (Magisterial Level), Thiruvannamalai was dismissed as not maintainable. According to the learned Senior Counsel, the learned Judicial Magistrate examined the first Petitioner in the absence of his Counsel. Even before the arrival of the Counsel for the Petitioners, the statement of the first Petitioner was recorded based on the reply given by him to some questions put forth by the learned Judicial Magistrate himself. In the absence of the Counsel for the Petitioners, the learned Judicial Magistrate ought not to have recorded the statement, that too, from a mentally challenged person. Further, the domestic violence proceedings are criminal in nature and there cannot be any examination of the first Petitioner against his own interest as it would be in violation of Article 20 (1) and 21 of The Constitution of India. The learned Senior Counsel for the Revision Petitioners therefore prayed this Court to set aside the order of the learned Judicial Magistrate-I holding Full Additional Charge of Additional Mahila Court (Magisterial



Level), Thiruvannamalai.

WEB COPY

4. In support of his contention, the learned Senior Counsel for the Revision Petitioners relied on the following reported decisions:

4.1. In *(2021) SCC OnLine Mad 1954 [P.Arun Prakash and others vs. S. Sudhamary]* this Court has held as under:

“The proceedings under the [Domestic Violence Act](#) are criminal proceedings and any petition to transfer a case registered under the [Domestic Violence Act](#), must be entertained only under the code of criminal procedure and certainly not by invoking the [Article 227](#) of Indian Constitution to transfer the said case to the Civil Court or Family Court.”

4.2. In *2021 SCC OnLine Megh 58* in the case of *Masood Khan vs. Smti. Millie Hazarika, the Meghalaya High Court has observed as under:*

“49. It is to be reminded that the inherent powers of the High Court as far as Section 482 Cr.P.C. is concerned is to be exercised only in the rarest of rare case, this Court finds that the circumstances cited by the Petitioner herein seeking indulgence of this Court in this respect does not qualify as such to warrant interference by this Court. Be that as it may, the Petitioner, overall is not left without remedy as the provision for appeal is very much available under the said DV Act, 2005.”

4.3. In *2021 SCC OnLine Cal 2602* in the case of *Chaitanya Singhania and another vs. Kushboo Singhania* the High Court of Calcutta had observed as under:

“29. Inherent jurisdiction of High Court is not part of the ordinary litigation process. While exercising powers under section 482, the court does not function as a court of appeal or revision. Appeal and revision processes are creation of statutes and not contemplated to be the part of inherent powers of the court. The High Court while exercising its



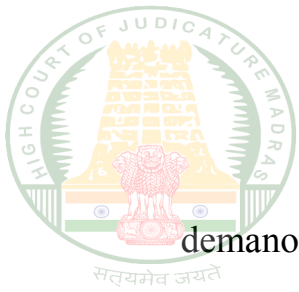
WEB COPY

inherent powers would not enter into the appreciation or re-appreciation of evidence as it done if a case would reach the court by way of a statutory appeal. Again the scope of revision is different from the inherent power of the Court. In revision, jurisdictional error, illegality of an order and material irregularity are the issues. But under the inherent power in the High Court, the Court will see if continuation of a criminal proceeding shall cause abuse of the process of the Court and cause of justice shall be defeated, if the proceeding is allowed to be continued.”

4.4. In **2011 SCC OnLine Ker 4156** in the case of **Baiju and another vs. Latha and another** the Kerala High Court has observed as under:

“17. Judgment of the Court of Sessions in an appeal though preferred under Sec. 29 of the Act being of an inferior criminal court, is revisable by the High Court in exercise of its power under Sections 397(1) and 401 of the Code. Petitioners have to take recourse to that remedy. In the circumstances, I am not inclined to exercise the extraordinary jurisdiction conferred on this Court under Sec. 482 of the Code.”

5. Mr. Kovi Ganesan, learned Counsel for the Respondent vehemently objected to the submissions of the learned Senior Counsel appearing for the Revision Petitioners stating that the Petitioners before the learned Judicial Magistrate-I holding Full Additional Charge of Additional Mahila Court (Magisterial Level), Thiruvannamalai, had engaged a Counsel. Engaging a Counsel by signing the vakalat is a contract under the Indian Contract Act and the first Petitioner is to be treated as competent person to enter into contract. Also, the order passed by the learned Judicial Magistrate-I holding Full Additional Charge of Additional Mahila Court (Magisterial Level), Thiruvannamalai is a well considered order after observing the

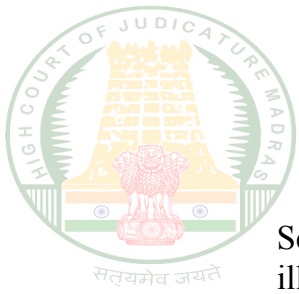


demanour of the first Petitioner. The learned Judicial Magistrate also interacted with the first Petitioner and came to the conclusion that the first Petitioner does not suffer from any mental illness. In such circumstances, the order passed by the trial court is well considered. This Criminal Revision Case has to be dismissed as having no merits.

6. In support of his contention, the learned Counsel for the Respondent relied on the reported decision of the High Court of Kerala in **2019 SCC OnLine Ker 2239 [Suo Motu vs. State of Kerala]** wherein it is observed as follows:

“6. **Section 258** of the Cr.P.C. is an enabling section which gives power to a Magistrate of the First Class or with the previous sanction of the Chief Judicial Magistrate, any other judicial Magistrate, to stop the proceedings at any stage without pronouncing a judgment by recording the reasons for the same. The provision states that where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, the learned Magistrate shall pronounce a judgment of acquittal. In any other case, the court is empowered to release the accused and such release shall have the effect of discharge.

7. Section 258 can be invoked only in peculiar and unusual circumstances in cases, wherein no prima facie case is made out against the accused or when the accusation does not actually CrI.RC:1869/2018 & Contd. Cases 11 constitute an offence or for the reason that the prosecution is bound to fail on account of a technical defect. For the reason that the accused had absconded or that despite the initiation of coercive proceedings, his presence could not be secured is no reason to invoke **Section 258** of the Cr.P.C. From the proceedings sheet, it does not appear that the learned Magistrate had made any genuine endeavour to secure the presence of the accused by exhausting the provisions under the Code. The order is laconic and is not supported by any reasons. The learned Magistrate has exceeded in its powers in invoking provisions of



Crl. R.C. No. 681 of 2021

Section 258 of the Code and hence, cannot be sustained, the same being illegal and irregular.”

WEB COPY

Point for consideration:

Whether the order dated 27.09.2021 passed by the learned Judicial Magistrate, Additional Mahila Court (Magisterial Level), Thiruvannamalai in Cr.M.P.No.789 of 2021 in D.V.C.No.4 of 2019, is to be set aside as perverse?

7. From the Lawyer's notice issued by the Respondent on 26.10.2016, she, on her own admission, stated that her husband/first Petitioner is a person of unsound mind. When that be so, any proceedings either civil or criminal against a person of unsound mind cannot be proceeded against.

8. On perusal of the Lawyer's notice issued by the Respondent herein, it is clear that the first Petitioner was subjected to medical examination before the Department of Psychiatry, Christian Medical College, Bagayam, where the Doctors advised the Respondent herein that it is safe for her to live away from her husband as it would endanger her life and to the life of the child. The learned Judicial Magistrate-I holding Full Additional Charge of Additional Mahila Court (Magisterial Level), Thiruvannamalai, failed to consider those facts. Therefore, the order passed by the learned Judicial Magistrate-I holding Full Additional Charge of Additional Mahila Court



(Magisterial Level), Thiruvannamalai rejecting the contention of the
Petitioners herein that proceedings cannot be initiated against a person of
unsound mind, is found perverse.

9. In the light of the above discussion, the decisions cited by the learned Counsel for the Respondent herein will not hold good and therefore, the same is rejected.

10. In the light of the above discussion, the decisions relied by the learned Senior Counsel for the Revision Petitioners are found acceptable and applicable to the facts and circumstances of this case. When the Respondent-wife herself issued a Lawyer's notice contending that her husband-first Petitioner is mentally not stable and that her marriage with the first Petitioner has been solemnised by suppressing such mental disruption and the competent Doctors have also, upon medical examination of the first Petitioner declared that he is of an unsound mind and it is not safe for the wife and child to live with him, the observations of the learned Judicial Magistrate, to the contrary, cannot be accepted.

11. In the light of the above discussion, the Point for consideration is answered in favour of the Revision Petitioners and against the Respondent.



CrI. R.C. No. 681 of 2021

The order dated 27.09.2021 passed by the learned Judicial Magistrate-I holding Full Additional Charge of Additional Mahila Court (Magisterial Level), Thiruvannamalai in Cr.M.P.No.789 of 2021 in D.V.C.No.4 of 2019, is found perverse and the same is to be set aside.

In the result, **this Criminal Revision Petition is allowed.** The order dated 27.09.2021 passed in Cr.M.P.No.789 of 2021 in D.V.C.No.4 of 2019 by the learned Judicial Magistrate-I holding Full Additional Charge of Additional Mahila Court (Magisterial Level), Thiruvannamalai, is set aside. Consequently, connected miscellaneous petition is closed.

21.12.2024

srm
Internet: Yes/No
Index: Yes/No
Speaking/Non-speaking order

To

1. The Judicial Magistrate-I,
Additional Mahila Court (Magisterial Level),
Thiruvannamalai.
2. The Section Officer,
Criminal Section,
High Court Madras.

SATHI KUMAR SUKUMARA KURUP. J



WEB COPY



Crl. R.C. No. 681 of 2021

srm

Order made in
Crl.R.C. No.681 of 2021

21.12.2024