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Crl.R.C.Nos.468 and 470 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2025

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.Nos.468 and 470 of 2022

M.Prabha

... Petitioner in
both Crl.R.Cs

Versus

1.S.Karthik
2.Hemalatha

... Respondents in
both Crl.RCs

PRAYER in Crl.R.C.No.468 of 2022: Criminal Revision Petition filed under Section 397 r/w. 399 Cr.P.C. to set aside the order dated 16.12.2021 passed by the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai in Crl.M.P.No.828 of 2021 in Crl.M.P.No.398 of 2021 and direct Dr.D.Vijayamala, the Senior Divisional Commercial Manager and Public Information Officer at Southern Railway, directing her to produce the record of Mrs.Hemalatha, regarding marriage invitation card submitted for marriage and the application given declaring the marital status and recording the child born to them and give evidence.



Crl.R.C.Nos.468 and 470 of 2022

PRAYER in Crl.R.C.No.468 of 2022: Criminal Revision Petition filed under Section 397 r/w. 399 Cr.P.C. to set aside the order dated 16.12.2021 passed by the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai in Crl.M.P.No.968 of 2021 in Crl.M.P.No.398 of 2021 and direct Dr.K.Sharmila Banu, the Managing Director of Shepherd Nursing Home, directing her produce the records pertaining to the delivery of the male child on 13.03.2020 and give evidence.

For Petitioner
in both Crl.RCs. : Mr.P.Ramesh Kumar

For Respondents
in both Crl.RCs. : Mr.S.Sathish Kumar

COMMON ORDER

The petitioner and the respondent are common in both the revision petitions. The prayer sought for in both the revisions is with regard to the dismissal of Section 91 Cr.P.C. petitions in Crl.M.P.Nos.828 of 2021 and 968 of 2021 in the private complaint filed by the petitioner in Crl.M.P.No.398 of 2020. Hence, the above case is disposed of by a common order.



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2.The contention of the learned counsel for the petitioner is that the petitioner had love marriage with the first respondent against the wish of her parents on 02.11.2010. The first respondent was doing small time jobs like delivery man in Johnson Lift, Sales Executive in a real estate firm and as a delivery man in a marble powder coating company. Later he joined a Pharmaceutical company where he developed acquaintance with one M.Karthick, a Co-employee, both of them together started a partnership trading business in pharmaceutical drugs in the name of M/s.K.K.Vaccines. Two years later they parted their ways and the first respondent started a pharmaceutical business in the name of M/s.Thilagam Pharma projecting petitioner as its Proprietor. The petitioner for name sake and for sentimental reasons projected as Proprietor, the entire business and trading was by the first respondent. Since the bank account was in the name of the Proprietrix, the petitioner signed blank cheque leaves and left it with the first respondent for running the business. The petitioner blindly believed the first respondent since he was her husband and their marriage was a love



marriage. Later, she came to know that the first respondent misappropriated the entire pharmaceutical products which was supplied by the main dealers and not paid, even the rent for the business premises not paid. Thereafter, the first respondent absconded, the petitioner lodged a complaint and with great difficulty, he could be secured. At that time, the first respondent informed that since he was making arrangements for repaying the debts, he went out of station. Later it came to know that the first respondent developed relationship with the second respondent, who was employed in the Southern Railways as Travelling Ticket Examiner, both of them co-habitated and a boy baby was born to them. Prior to it, there was some doubt about the first respondent's relationship with the second respondent as they were seen together in Hotels, Cinema theatres and various other places, the petitioner along with her brother went to the second respondent's house, the petitioner was informed that the first respondent come and stay with the second respondent. Thereafter, it came to know that the second respondent employed in Southern Railways, gave birth to the child in the Shepherd Nursing Home, Kumaran Nagar, Peravallur on 13.03.2020 and child's parents are the first and second respondents. When the marriage between



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the petitioner with the first respondent is subsisting, knowingly the second respondent co-habitated with the first respondent and also given birth to the child.

3.The learned counsel further submitted that the petitioner earlier filed a petition for restitution of conjugal rights before the Family Court. Initially the first respondent agreed to live with the petitioner but he failed to comply with the undertaking and when the maintenance case was filed against the first respondent, he informed that he had no means of income. Later it came to know that the petitioner was running a fancy shop in the name of the second respondent and he is having three more shops and was earning good income, but he projected as though he is without income. Earlier the first respondent given cheque leaves signed by the petitioner to the dealers for the medicines purchased and created a liability of more than Rs.96 lakhs in the name of the petitioner despite the petitioner is only a name lender being his wife and nothing more. The first respondent betrayed the matrimonial life, misused the cheques in the name of the petitioner. Further, the first respondent borrowed huge amounts nearly around Rs.30



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lakhs from the petitioner's relatives. The petitioner lodged a complaint and a case was registered by the CCB Police in Crime No.106 of 2021 against the respondents. The complaint is that the respondents conspired and misappropriated around Rs.1.19 Crores. The petitioner filed a private complaint for Bigamy and case under Section 494 IPC in CrI.M.P.No.398 of 2020 in which petitioner examined herself as P.W.1 and her brother as P.W.2. In their evidence, they have clearly deposed about the respondents living as husband and wife, begotten a baby. The second respondent is employed in Southern Railways, she declared the first respondent as her husband and also the baby, availed maternity leave and other benefits. The first respondent was shown as dependent. The first respondent having cheated the petitioner is leading a merryful and happy life, stocked with misappropriated amount. The CCB Police unable to show substantial progress in the investigation in this regard. The petitioner filed two miscellaneous petitions under Section 91 Cr.P.C. CrI.M.P.No.828 of 2021 filed to summon the employer of the second respondent, Southern Railway, to produce service record of the second respondent, her marital status, marriage details and the child born to her. Cr.M.P.No.968 of 2021 filed



seeking details from the Shepherd Nursing Home, Kumaran Nagar,

Peravallur to produce the records pertaining to the male child born to the respondents on 13.03.2020 and the declaration and admission by them. The Trial Court dismissed both petitions stating that it is for the petitioner to prove that the first and second respondents got married and living as husband and wife, the petitioner's contention that a baby was born to the respondents alone will not be sufficient to prove that the respondents married and the declaration given by the second respondent declaring the first respondent as dependent to her employer in the service register would not prove the second marriage, which is not proper. When there is no direct evidence available, the petitioner can prove the case through other means by way of circumstantial evidence, hence summoning of the documents is imperative, essential to arrive at the just decision of the case.

4.In this case, the respondents delaying to receive the notice and were adopting all dilatory tactics. Initially the first respondent engaged a counsel and later changed his counsel on more than one occasion and the case got delayed for service of summons, only after coercive steps, the first and



second respondent appeared before this Court.

WEB COPY 5.Mr.S.Sathish Kumar, learned counsel for the respondents submitted

that the respondents were living together, this living together relationship is accepted now and that alone would not be sufficient to prove that they are married and living as husband and wife. He would submit that it is the petitioner who deserted the matrimonial home and she is living with her parents and now projecting a false complaint. He would further submit that the petitioner filed a private complaint under Section 494 Cr.P.C. and it is for her to prove the case with the materials and not to do witch hunting and fish for evidences, against the accused persons. As regards the other allegations, the learned counsel submitted that there have been proceedings initiated by the petitioner before the Family Court as well as before CCB and all are defended by the first respondent taking to legal recourse.

6.Considering the submissions made and on perusal of the materials, it is seen that the petitioner, estranged wife of the first respondent filed a private complaint against the respondents 1 and 2 for the offence under Section 494 IPC for bigamy. The petitioner married the first respondent on



02.11.2010 against the wish of her parents. It was a love marriage. The

first respondent initially worked in various menial jobs and thereafter started a pharmaceutical business along with his friend M.Karthik. Later, the first respondent started a Pharmaceutical firm on his own in the name of his wife/petitioner herein and was doing business. The petitioner was convinced stating that she being a lucky maskett, her name would be used as Proprietor. Believing his sugar coated words, the petitioner signed and handed over blank cheque leaves which is used for the business. The first respondent using the same collected pharmaceutical products from the main Distributors and later sold it in the market but not paid the Distributors and made the petitioner liable using the signed blank cheques of the petitioner. The first respondent continued his way ward life, developed a relationship with the second respondent which was reprimanded by the petitioner and her brother, they also lodged a police complaint. Though the first respondent gave an undertaking that he will not have any relationship with the second respondent, but contrary to the same he continued his relationship and even gone underground for months. The petitioner was burdened with the first respondent's liability who siphoned off huge



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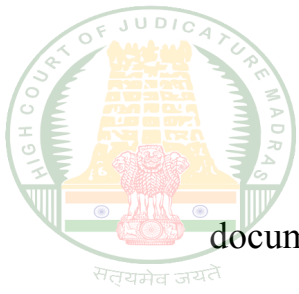
amount, spent on the second respondent and both the respondents 1 and 2 are living happily. The second respondent knowing well that the first respondent is married to the petitioner continued her illicit relationship, married him in a secretive manner and begotten a boy baby. The second respondent is employed in Southern Railways where she declared the first respondent as the legal heir and the baby born to them. Since the marriage was secretive, direct evidence will not be available but the Nursing Home records confirms the second respondent gave birth to a baby and in the medical records the name of the parents of the baby recorded as first and second respondents which is an admission and the details could be identified by the petitioner. Likewise, the declaration of the second respondent to the Southern Railway about her marital status and family life is also an admission.

7.Before the Trial Court, the petitioner examined herself as P.W.1, marked some documents and her brother examined as P.W.2. The Trial Court still has not converted the preliminary enquiry, taking cognizance and assign C.C. Number which causes some doubt, hence the petitioner filed



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petitions under Section 91 Cr.P.C. in Crl.M.P.No.828 of 2021 and Crl.M.P.No.968 of 2021 and the same was dismissed for the reason that mere production of these documents would not be sufficient to prove the bigamy. This observation may not be proper. A person who commits the offence secretly and privately, in a deceitful manner, well planned, direct evidence may not be immediately available. The respondents 1 and 2 both residing together and they were seen together in Cinema theatre, Restaurants and various other places. Before the Family Court in the petition filed for restitution of conjugal rights, the first respondent gave an undertaking to join the petitioner but later not complied with the same. The first respondent was running a fancy shop in the name of the second respondent in more than one place and he is living a happy matrimonial life with the second respondent and a baby born to them, all facts clearly deposed by the petitioner and her brother during their examination before the Trial Court. Though the birth certificate of the baby confirms the first and second respondent as the father and mother of the baby and it is only due to both respondents living as husband and wife would be sufficient to prove bigamous life, in addition to prove the relevancy of facts, the



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documents sought for by the petitioner is necessary.

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8.In view of the above, the impugned orders passed by the Trial Court in Crl.M.P.No.828 of 2021 and Crl.M.P.No.968 of 2021 dated 16.12.2021 both set aside. Accordingly, the concerned persons from Southern Railway and Shepherd Nursing Home, Kumaran Nagar, Peravallur are directed to produce the details sought for by the petitioner. The Trial Court on satisfying itself with the evidence recorded, to take the case on file, assign Calender Case Number and complete the trial proceedings without further delay.

9.In the result, the Criminal Revision Petitions stand allowed.

18.03.2025

Index : Yes/No

Neutral citation: Yes/No

Speaking order/Non-speaking order

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To

- 1.The Metropolitan Magistrate,
Additional Mahila Court,
Egmore, Chennai.
- 2.The Senior Divisional Commercial Manager &
Public Information Officer,
Commercial Department,
Southern Railway,
Divisional Railway Manager's Office,
Chennai Division, Chennai – 03.
- 3.The Managing Director,
M/s.Shepherd Nursing Home,
No.19, Kumaran Nagar,
80 Feet Main Road,
Peravallur.



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M.NIRMAL KUMAR, J.

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