

C.R.P.(PD)(MD).No.546 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 19.02.2025

DELIVERED ON: 04.03.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.R.P.(PD)(MD).No.546 of 2024
and CMP(MD).No.2723 of 2024**

R.RenganathanPetitioner/1st Respondent/Respondent

Vs

1.S.Sindhuja ...1st Respondent/Petitioner/Petitioner

2.Ambiga Deshmuk ...2nd Respondent/2nd Respondent
/Proposed 2nd Respondent

(Notice to R2 is given up)

PRAYE: Civil Revision Case is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 01.11.2023 made in I.A.No.01 /2023 in HMOP.No.115 of 2021 on the file of Sub Court, Virudhunagar.

For Petitioner : Mr.R.Suriya Narayanan

For Respondents :Mr.G.Mariappan for R1

:R2- Given up (EB)



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ORDER

The respondent/husband in HMOP.No.115 of 2021 on the file of the Subordinate Court, Virudhunagar is the revision petitioner.

(A).Factual Matrix:

2.The first respondent had filed the above said petition under Hindu Marriage Act for the relief of divorce on the ground of adultery, cruelty and desertion.

3.The allegation relating to adultery in Paragraph No.22 of the divorce petition is extracted as follows:

“22.It is submitted that later on 15.06.2020 the petitioner had the shock of her life when the respondent's paternal uncle disclosed that the respondent is having an extra-marital affair with a lady who was the schoolmate of the respondent and a divorcee living in Chennai, during a meeting of the elders of both the families, the respondent who was present there, had confessed and acknowledged the affair with the said lady. The respondent had further stated that he cannot live without the said lady. It turned out that the respondent's monthly sojourn under the pretext of Seminar and conference was always to lead a sexual life with that lady. The petitioner was thoroughly shattered and realized that she has reached a point of no return.”



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4.The petitioner/husband has filed a counter disputing the said allegation. The relevant portion in Paragraph No.15 is extracted as follows:

“15....The character damaging allegation the petitioner hurled against the respondent, linking the former with a lady, caused serious damage upon the psyche of the respondent. The allegation made against this respondent and connecting him with his schoolmate made in para 22, 23 of the application are denied as false. The petitioner was suspicious enough to implicate this respondent with a lady who happened to be his schoolmate. The insinuation made against the respondent hurt the respondent very badly. Convincing words were not sufficient to set right the petitioner. The allegation made in this regard is very vague. Such an allegation cannot be made without impleading the lady as a party respondent. The divorce application preferred in her absence is legally not maintainable and the same deserves to be dismissed.”

5.In view of the specific defence taken by the husband that without impleading the adulteror, the divorce petition is not maintainable, the wife had filed I.A.No.1 of 2023 to implead the adulteror.

6.The respondent has filed a counter contending that he is not



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having any acquaintance with the proposed respondent and without any iota of evidence, the wife seeks to implead the alleged adulteror in the divorce petition. The respondent had further contended that the application is fully misconceived and it has been filed only to protract the proceedings. He had further contended that impleading of the proposed party is totally against the mandate of law and impleading of the proposed party will not have any impact upon the divorce proceedings.

7.The trial Court after considering the pleadings and submissions made on either side and after perusing Document No.8 (Whatsapp messages) annexed to the divorce petition, arrived at a finding that only if the alleged adulterer is impleaded, the real meaning and the background, in which such the whatsapp messages were sent by the husband to the wife could be found out. Challenging the said order, this revision petition has been filed by the husband.

(B).Contentions of the counsels:

8.According to the learned counsel for the revision petitioner/husband, the alleged adulteror is neither a necessary party nor a proper party. The Hindu Marriage Act, 1955 or the Madras High Court Rules under the Hindu Marriage Act mandate impleading of the alleged

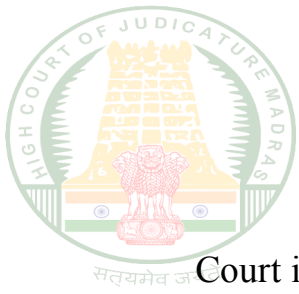


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adulteror. Merely because a defence has been raised in the counter, that will not confer any cause of action upon the petitioner to implead the alleged adulteror. When no prayer has been sought for as against the alleged adulterer, her impleadment would cause unnecessary delay in the proceedings.

9.In the written submissions filed by the learned counsel for the revision petitioner, it is submitted that he is ready to withdraw the objection raised in the counter that non-impleading of alleged adulterer would result in non-joinder of necessary party. The learned counsel for the petitioner had relied upon a Division Bench judgment of Delhi High Court in MAT.APP.(F.C)219/2024 dated 16.07.2024 wherein the Hon'ble Division Bench has held that a third party who does not claim the status of a spouse has no locus to intervene or seek impleadment in such a cause. In such circumstances, he prayed for allowing the revision petition.

10.Per contra, the learned counsel appearing for the respondent/wife relying upon the counter filed by the respondent has contended that he had already taken a specific defence that non-impleadment the alleged adulterer would result in non-joinder of necessary party. The learned counsel had relied upon a judgment of this



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Court in **C.M.A.No.1916 of 2000 (Kalaimathy Vs. Manila Gandhi)** dated **06.04.2023** and contended that this Court had dismissed a divorce petition on the ground of non-impleadment of adulterer.

11.The learned counsel for the **respondent** had relied upon a Division Bench judgment of Karnataka High Court reported in **AIR 2003 Karnataka 508 (Arun Kumar Agarwal Vs.Radha Arun and Another)** wherein it has held that the alleged adulterer will be a proper party to the proceedings under Hindu Marriage Act. The learned counsel has also placed reliance upon the judgment of this Court reported in **2005 (2) CTC 28 (M.Mallika Vs. M.Raju and another)** wherein this Court has dismissed a revision petition confirming the order impleading the adulterer after relying upon a Division Bench judgment of Andhra Pradesh High Court reported in **2000(II) DMC 40 (DB) (Mirapala Venkataramana Vs. Mirapala Peddiraju)**. Hence, he prayed for dismissal of the revision petition.

12.I have considered the submissions made on either side and perused the material records.

(C)Discussion:

13.The issue that arises for consideration is whether the alleged



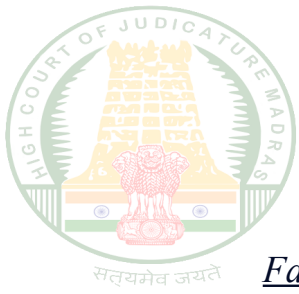
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adulterer is a necessary party to a divorce petition filed on the ground of adultery under Hindu Marriage Act.

14.The issue is no longer *res integra*. The Hon'ble Division Bench of our High Court in a judgment in *CMA(MD).No.434 of 2019* dated 28.01.2025 (*X vs.Y*) while considering a similar issue arising under Hindu Marriage Act in Paragraph Nos.6, 7 & 8 has held as follows:

*“6.We can conceive of cases and situations wherein one of the spouses failed to keep the vows of marital fidelity. It could be a solitary lapse. He or she could have gone for what is called in current parlance as “one night stand”. This could have been subsequently discovered by the other spouse. A person committing a mistake often leaves a trail inadvertently. Sometimes there could even be a confession due to pangs of conscience. If the other party is unforgiving, he or she may choose to snap the marital tie on this ground. But then, the applicant will not have knowledge or details of the person with whom the adultery was committed. Even making due efforts may be in vain. In such circumstances, insisting on making the adulterer a co-respondent would lead to unfair results. The latin maxim *Lex non cogit ad impossibilia* (law does not compel the impossible) can very well be invoked in such cases. We, therefore, hold that if the petitioner is aware of the details of the alleged adulterer, he or she must be made a co-respondent.*

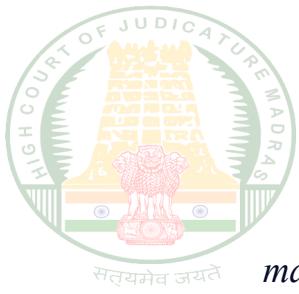


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Failure to implead would be fatal and the petitioner will have to be non-suited summarily at the very threshold. If according to the petitioner, the name of the adulterer or adulteress is not known or if the alleged adulterer or adulteress is dead, the petitioner can be excused from the requirement of impleading the alleged adulterer. The petitioner must of course get leave from the court for being so excused.

7.The principal reason that leads us to hold that the alleged adulterer must in normal circumstances be made a corespondent is that it is the most appropriate thing to do. Some Judges have taken the view that it will amount to invading the privacy of the third party. We do not think so. Accepting the case of the petitioner suing for divorce on the ground of adultery would result in casting stigma and aspersion on the character of the person with whom the respondent is said to have had an adulterous relationship. Opportunity ought to be given to the said individual to disprove the allegation made by the petitioner. Otherwise, he would stand condemned behind his back. Administrative law is not the exclusive domain for application of the principles of natural justice. They do permeate the other branches of law too. After all, it is only just and fair that a person is heard before he is condemned. Certainly, in our culture, to be branded an adulterer is not a badge of honour.

8.Yet another reason for taking the above view is that it would discourage one from making reckless allegations. If



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making the alleged adulterer as co-respondent is made mandatory, one would think twice before putting forth baseless allegations.”

15.A contention was raised on the side of the petitioner/husband that when no relief is sought for as against the alleged adulterer, he/she cannot be impleaded as a party to the divorce proceedings.

16.The Hon'ble Supreme Court in a judgement reported in **(1995) 3 SCC 147 (Anil Kumar Singh Vs. Shivnath Mishra Alias Gadasa Guru)** in Paragraph No.10 has held as follows:

“10.A person may be added as a party defendant to the suit though no relief may be claimed against him/her provided his/her presence is necessary for a complete and final decision on the question involved in the suit. Such a person is only a proper party as distinguished from a necessary party..... “

17.In view of the judgment of the Hon'ble Supreme Court cited supra, it is clear that even though no relief is sought for as against the alleged adulterer, if his/her presence is necessary for a complete and final decision on matrimonial dispute, the alleged adulterer could be treated as a proper party.



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18. A consolidated reading of the above said judgments would make it clear that the alleged adulterer is a necessary party to a divorce proceeding where there is an allegation of adultery. Merely because no relief is sought for as against the adulterer, he or she cannot be considered to be an unnecessary party. In case, if the alleged adulterer wishes, he or she may file a counter and dispute the allegation made against him or her.

19. In some cases, there is likelihood of names of celebrities being dragged into the matrimonial dispute at the back of such person in order to settle the matrimonial dispute. The Courts are likely to make certain adverse remarks on the alleged adulterer based upon the pleadings and evidence let in by the couple. In such circumstances, the image of the alleged adulterer is likely to get affected without even having any connection with the concerned couple.

20. On being impleaded as a party, the adulterer may either remain silent or intervene in the said proceedings to state that he or she is not even acquainted with the spouse or choose to explain the relationship. Option may be best left to the alleged adulterer. Therefore, the alleged adulterer is impleaded only to protect his or her interest. Merely because the alleged adulterer had remained exparte, the Court cannot presume that



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the allegations of adultery are proved. Even in such circumstances, the burden would continue to rest upon the spouse, who made such allegations, to prove the same.

21. In the present case, the husband has taken a specific defence in the counter that the divorce petition is not maintainable without impleading the adulterer. But in the written submissions filed by the counsel in the High Court, it is stated that the husband would withdraw the objection and will not insist the plea of non-joinder. This Court has already arrived at a finding that the alleged adulterer is a necessary party to the proceedings. In such circumstances, the consequences of withdrawal of the objection raised by the husband pales into insignificance.

22. The alleged adulterer after having received notice in the impleading petition before the trial Court has chosen to remain exparte and therefore, it is clear that she has no objection for being impleaded in the proceedings. In such circumstances, the alleged adulterer being a necessary party and having not chosen to contest the impleading application, the husband cannot question the impleading of the adulterer.



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23. In view of the above said deliberations, there are no merits in the revision petition and the revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04.03.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Subordinate Judge, Virudhunagar.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery order made in
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