

M.Kumaran Vs. State

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Court : Chennai

Decided On : Sep-27-2013

Judge : M.Jaichandren

Appellant : M.Kumaran

Respondent : State

Judgement :

THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

27. 09.2013 CORAM THE HONOURABLE MR.JUSTICE M.JAICHANDREN
Crl.R.C.No.1295 of 2012 and M.P.Nos.1 & 2 of 2012 M.Kumaran .. Petitioner
Versus 1. State Rep. by The Inspector of Police All Women Police Station, Erode.
Crime No.2 of 2011 2. E.Arthi Kailash .. Respondents (R2 impleaded as per the
order of this Court dated 12.10.2012) Prayer: Revision Petition is filed under
Sections 397 read with 401 of the Code of Criminal Procedure to call for the
records and set aside the order dated 11.09.2012 passed in Crl.M.P.5040 of 2012
in C.C.No.220 of 2011 on the file of the learned Judicial Magistrate No.I, Erode.
For Petitioner : Mr.N.R.Elango, Senior Counsel, For Mr.R.Vivekananthan For R1 :
Mr.R.Prathap Kumar Govt. Advocate (Crl.Side) For R2 : Mr.M.Guru Prasad *****

ORDER

This Criminal Revision Petition has been filed against the order passed, in
Crl.M.P.5040 of 2012 in C.C.No.220 of 2011 on the file of the learned Judicial

Magistrate No.I, Erode.

2. This Criminal Revision Petition was referred for mediation to the Tamil Nadu Mediation and Conciliation Centre, High Court of Madras, by the order of this Court, dated 26.06.2013.

3. A communication, dated 18.09.2013, of the Tamil Nadu Mediation and Conciliation Centre, High Court of Madras, enclosing a copy of its Mediation Report, dated 12.09.2013, has been received, and in the said Mediation Report, it is stated as follows:- ".Parties appeared before the Centre along with their Counsel. Parties arrived at an amicable settlement as per the terms in the Mediation Agreement. Hence the matter is sent back to the Hon'ble Court.".

4. As the parties have arrived at a settlement in terms of the Mediation Agreement, dated 12.09.2013, this revision petition is listed for passing orders in terms of the said Mediation Agreement.

5. The Mediation Agreement, dated 12.09.2013, signed by the parties and their respective counsels, reads as follows:- ".M.Kumaran / Petitioner is the brother-in-law of the First Party / A.Sundaramoorthi and E.Arthi Kailash / 2nd Respondent / Second Party. The said E.Arthi Kailash / 2nd Respondent / Second Party has filed a complaint in C.C.No.220/2011 on the file of the Judicial Magistrate, Erode No.1, against M.Kumaran / Petitioner. Further First Party / A.Sundaramoorthi / Husband / Brother-In-Law of M.Kumaran / Petitioner and E.Arthi Kailash / 2nd Respondent / Wife of the 1st Party agreed to settle the dispute amicably between them on the following terms. Both 1st & 2nd Party, out of their own volition and without any pressure or coercion from any side have agreed as follows:

1. Whereas the marriage between the 1st party and 2nd party solemnized at Erode Saravana Mahal Thirumana Mandapam, on 17.06.2010 and the reception was conducted on 20.06.2010 at Sakthi Duraisay Mandapam / Erode after that both went to America on 04.07.2010 and returned to India on 26.09.2010.
2. Whereas after returned to India both parties due to various difference of opinion between them have decided to live separately nearly 3 years. There is no chance of reconciliation of marriage between the parties and it is impracticable for them to

live together and continue the marital relationship in future. 3. Whereas the first party and second party have decided to resolve all the issues between them as advised by their relatives, well wishers and friends and agreed for resolving all the civil and criminal cases. They have also consented for mutual divorce based on this memorandum of understanding on their own volition and without any duress, misrepresentation or collusion. Now both parties are willing to set forth the strains, difference of opinion and dispute developed between them which has crept in and has become irreparable. 4. Whereas the second party has lodged the following complaint / cases against the first party and his Family members: i) Maintenance case filed u/s 125 of Cr.P.C. against the first party in M.C.No.7 of 2011 and now it is pending trial before the Chief Judicial Magistrate, Erode. ii) Domestic violence case was filed against the first party and his family members in M.C.No.5 of 2011 and it is pending before the Judicial Magistrate No.I, Erode. iii) Dowry harassment case was filed against the first party and his family members in Crime No.2 of 2011 before the All Women Police Station, Erode u/s 498-A and 406 of IPC and Section 4 & 6 of Dowry Prohibition Act and after filing charge sheet under section 498(A) IPC and 4 & 6 of Dowry Prohibition Act now it is pending in C.C.No.220 of 2011 before the Judicial Magistrate I, Erode (Previous Complaint dated 15.10.2010 in C.S.R.No.338 of 2010 before the same All Women Police Station). iv) Interim maintenance petition was filed against the 1st party by the 2nd party in I.A.No.405 of 2012 in H.M.O.P. No.331 of 2011 before the Principal Sub-Court, Erode and on 03.04.2013 an interim maintenance of Rs.1, 500/- (One thousand and five hundred Rupees only) was ordered for every month to the 2nd party.

5. Whereas the first party has lodged the following complaint / cases against the second party and her Family members:- i) The first party originally filed a divorce petition against the second party in H.M.O.P. No.128 of 2010 before the Palani Sub-Court, and subsequently it was transferred to the Principal Sub-Court, Erode and renumbered as H.M.O.P. No.331 of 2011 and it is pending. ii) The first party filed a cheating case against the 2nd party and her family members before the Inspector of Police, District Crime Branch and as per the order of Judicial Magistrate No.III, Erode it was registered in Crime No.1 of 2012 U/S 420, 417, 468 and 471 of I.P.C and now it is pending. iii) The 1st party has moved a miscellaneous petition C.M.P No.3483 of 2012 before the Learned Judicial

Magistrate III Erode in Crime No.1 of 2012. The Trial Court issued direction to seize the passport of E.Chakravarthi Kailash (brother of second party) by order dated 19.06.2012. (Against the order of the trial Court Criminal Original Petition was filed in Crl. O.P.No.20166 of 2012 and the same is pending).

6. The 1st Party out of his strenuous effort has arranged a sum of Rs.20 Lakhs from his relatives, friends and well wishers. This payment of Rs.20 lakhs by the 1st party to the 2nd party is full and final settlement to the 2nd party's claims for the past, present and future in respect of the alimony, maintenance, litigation cost, articles of any nature, gift or articles, personal belonging, all kind of expenses and any demand whatsoever. The 2nd party will not have any claim of any nature whatsoever against the first party or his family members in any court of law. The 2nd party agrees that she or her family members will not claim anything from the 1st party and his family members of the self earned movables and immovable properties including the ancestral properties, inherited / inheritable properties. All the Articles were already exchanged between the parties. The 1st party agreed to give the above said Rs.20 lakhs in the following manner: i) On this day of signing of Mediation Agreement Rs.5 Lakhs was handed over by the 1st Party to the 2nd Party by way of following Three Demand Drafts: (1) A sum of Rs.1 Lakh in D.D.No.017259 drawn on 22.07.2013 at ICICI Bank, Velachary, Chennai. (2) A sum of Rs.2 Lakhs in D.D.No.017258 drawn on 22.07.2013 at ICICI Bank, Velachary, Chennai. (3) A sum of Rs.2 Lakhs in D.D.No.010144 drawn on 07.09.2013 at ICICI Bank, R.A.Puram, Chennai. ii) Rs.5 lakhs shall be given to the 2nd party by the 1st party at the time of filing Mutual Divorce Petition under section 13(b) of the Hindu Marriage Act, at Erode, between both the parties mentioning the D.D.Nos. in the Divorce Petition on or before 20.09.2013. iii) Rs.7 lakhs shall be given to the 2nd party by the 1st party on the date of hearing of the quash petitions to be filled before the Honble High Court, Chennai against the cases mentioned in para-4 of this Mediation Agreement initiated by the 2nd party against the 1st party and his family members. iv) Rs.3 lakhs shall be handed over to the Counsel of the 2nd Party and same will be handed over to the 2nd Party after passing the final orders in 13B Application.

7. All the above said amounts will be given by the 1st party to the 2nd party by way of demand draft only. The demand drafts (D.D) for Rs.20 lakhs have been taken by the 1st party and the demand draft (D.D) numbers are mentioned below. All the demand drafts are drawn on ICICI Bank. Demand Draft (D.D) Date Demand Draft (D.D) Number Amount in INR

D.D) Number	Amount in INR	Date	D.D) Number	Amount in INR	Date
017259	1,00,000	22.07.2013	017258	2,00,000	07.09.2013
010144	2,00,000	07.09.2013	010145	5,00,000	10.09.2013
018105	1,00,000	10.09.2013	018106	1,50,000	10.09.2013
018107	2,50,000	11.09.2013	018139	1,00,000	11.09.2013
018141	2,00,000	12.09.2013	018155	25,000	12.09.2013
018154	1,75,000				

The 1st Party agrees to replace the lapsed Demand Draft if any before handing over to the 2nd Party.

8. The first party and second party have now decided to give quietus to all issues, proceedings and litigations that arose out of the dispute, claim and counter claim.

9. The 1st party agrees to withdraw the divorce application filed in H.M.O.P.No.331 of 2011 pending on the file of Principal Sub Court, Erode (which was originally filed in Palani Sub Court in the H.M.O.P. No.128 of 2010) and simultaneously the 2nd party also agrees to withdraw the interim maintenance application filed in I.A.No.405 of 2012 in H.M.O.P. No.331 of 2011 pending before the Principal Sub Court, Erode and on the same day both the 1st and 2nd party agree to present a 13B application seeking for mutual divorce and on the date of final of the 13B mutual divorce D.D. of Rs.5 lakhs shall be given to the second party. This memorandum of understanding will be part and parcel of the divorce petition filed u/s 13B Hindu Marriage Act. The 2nd party hereby confirms and agrees that she will never under any circumstances whatsoever will not appeal in any court of law or to take steps to recover the money in any forum against the order passed in I.A.No.405 of 2012 in H.M.O.P No 331 of 2011 on the file of the principle sub judge, Erode by order dated 03-04-2013.

10. Whereas, in the immediate following week quash petitions will be filed in this honble High court at Madras. The 2nd party agreed and undertake to say 'No Objection' for the quash petitions to be filed in the High Court against the cases filed by the 2nd party against the 1st party and his family members mentioned in Para 4 of this Memorandum of Understanding. The 2nd party agreed to file

affidavit to that effect in all the three quash petitions based on this Mediation Agreement. In all the cases this Mediation Agreement will be part and parcel of the quash petitions and in the divorce petition. Both the Parties / Complainants agree to be present and file Affidavit at the time of hearing of quash applications. Both the party hereby agrees and undertakes not to make any allegations or filing cases or appeals in present and future against each other and their family members.

11. As per the Honble High Court order in Crl.O.P No 18912 of 2012 dated 10.08.2012 in M.C52011, the 1st party deposited Rupees 25,000 (Twenty five thousand Rupees only) before the Judicial Magistrate-III Court, Erode and the amount lying in the trail court. Based on this Memorandum of Understanding, the 2nd party has No Objection to the 1st party to withdraw the above said Rupees 25,000 (Twenty five thousand Rupees only).

12. The 1st party agrees to give No objection for the quash application, which is to be filled on the same day when the 1st party files his quash petitions before the Honble High Court, Madras, in crime No.1 of 2012 on the file of the District Crime Branch Erode. Furthermore the 1st party agrees to give No objection for the Crl.O.P. No.20166 of 2012 pending on the file Honorable High Court. The 1st Party agrees that he will not prefer any private complaint in respect of Crime No.1/2012 on the file of D.C.B. Erode.

13. Both the parties and their family members agreed to withdraw and not to pursue any other cases / complaints of any nature if filed against each other or against the other partys family members, relatives in any forum, apart from those that are explicitly mentioned in this Mediation Agreement. Whereas, both the parties agree that in view of the settlement in order both agree and undertake not to interfere in their life in future.

14. Whereas both the parties agree and undertake that they will not retract their consent for quashing the criminal cases / withdrawing the cases / mutual divorce petition to be filed under section 13(b) of the Hindu Marriage Act at later stage.

15. If the first party retracts from this Mediation Agreement or fails to pay the amount to the 2nd party in any stage the 2nd party is entitled to reopen M.C.No.7

of 2011 on the file of Chief Judicial Magistrate, Erode, and M.C.No.5/2011 on the file of Judicial Magistrate I, Erode and C.C.No.220/2011 on the file of Judicial Magistrate, Erode initiated by her against the 1st party as if all the case pending as on today. The 2nd party agrees that if she retracts and goes back from this Mediation Agreement or failed to give consent for the quash petitions, and the mutual divorce petitions to be filed, the first party is entitled to pursue the cheating complaint given by him against the 2nd party in Crime No.1/2012 on the file of the D.C.B., Erode and her family members, and also the first party is entitled to re-open the H.M.O.P. No.331 of 2011 before the Principal Sub Judge, Erode.

16. Both the parties agree that the settlement contained in Memorandum of Understanding is comprehensive and final and no further or subsequent conditions/ demands will be raised at any stage. The 2nd Party should repay the amount received from the 1st Party with bank interest if she retracts from this Mediation Agreement.

17. Both the parties agree to co-operative in all cases without fail as mentioned in this Memorandum of Understanding. Both the parties agree that the dates of filing quash petitions and the mutual divorce petition will be informed to their respective advocates.

18. This Memorandum of Understanding is intended to be final deposition of matters addressed herein and may be used as evidence and will be incorporated into all the final order of the quash petitions and the mutual divorce petition to be filed/ present divorce petition going to be withdrawn. Both the parties agree to bear their respective litigation expenses.

19. It is made clear in an unambiguous manner both the parties should not disturb either of them or their family members in any manner whatsoever in future.

20. Both the parties agree to perform their party of obligation under this compromise deed between them."

6. In terms of the settlement arrived at between the parties, which is recorded under the Mediation Agreement, dated 12.09.2013, and in terms of the Mediation

Report, dated 12.09.2013, before the Tamil Nadu Mediation and conciliation Centre, High Court of Madras, this Criminal Revision Petition is disposed of, recording the terms of the Mediation Agreement, dated 12.09.2013. The terms of the Mediation Agreement, dated 12.09.2013, and the Mediation Report, dated 12.09.2013, of the Mediation Centre, shall form part of the order. The Miscellaneous Petitions are closed. 27.09.2013 Index: Yes / No Internet: Yes / No ar/csh Note: Issue order copy on 30.09.2013 To 1. Judicial Magistrate No.I, Erode 2. The Inspector of Police All Women Police Station, Erode. M.JAICHANDREN,J.

ar/csh Crl.R.C.No.1295 of 2012 27.09.2013

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