
(2010) 11 MAD CK 0260
In the Madras High Court
Case No : Criminal R.C (MD) No. 852 of 2010

Marisamy

APPELLANT

Vs

State by Sub Inspector of Police

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 109, 366A

Citation : (2010) 11 MAD CK 0260

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : K. Jeganathan, for the Appellant; L. Murugan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S. Tamilvanan, J.—Heard the learned Counsel appearing for the Petitioner as well as the learned Government Advocate appearing for the Respondent.

2. Challenging the order, dated 02.11.2010, made in CrI. M.P. No. 20957 of 2010, on the file of the Learned Judicial Magistrate, Uthamapalayam, this criminal revision has been preferred by the Petitioner, u/s 397 r/w 401 of Cr.P.C., seeking custody of the alleged victim girl Eswari, stating that the Petitioner had married the victim girl.

3. At the request of both the learned Counsel appearing for the Petitioner as well as the learned Government Advocate appearing for the Respondent, the alleged victim girl and the Petitioner were directed to be present before this Court along with their parents. The Petitioner, alleged victim girl Eswari and the parents of the Petitioner present in the open Court were identified by the learned Counsel appearing for the Petitioner as well as the learned Government Advocate appearing for the Respondent.

4. The learned Counsel appearing for the Petitioner submitted that the alleged

offence against the Petitioner/A1 is that he had kidnapped the minor girl and committed an offence punishable u/s 366A of I.P.C. and the parents of the Petitioner/A1, were arrayed as co-accused A2 and A3 for the offence u/s 366A r/w 109 I.P.C.

5. It is brought to the notice of this Court that the alleged victim girl had refused to go along with her parents and she being a minor girl was sent to home pursuant to the order of this Court. It is brought to the notice of this Court that she is in the family way and she needs proper care and protection.

6. On the aforesaid circumstance, the Petitioner/A1 filed the petition, seeking for her custody. The parents of the Petitioner/A1 have also filed separate undertaking affidavits in support of the claim of the Petitioner whereby undertook to provide proper care and protection to the alleged victim girl who is in family way. When the Court enquired the alleged victim girl, she informed to the Court that she married the Petitioner/A1 subsequent to the occurrence on 25.08.2010, at Sivanmalai Temple, Thirupur District.

7. The date of birth of the alleged victim is 07.05.1993. Hence as contended by the learned Counsel for the Petitioner the marriage between the Petitioner and the alleged victim is only a voidable marriage and it could not be a void marriage since the validity of the marriage depends upon the option of the alleged victim on attaining her majority. Since, she is in family way, the Court has to consider the petition on humanitarian grounds.

8. As stated in the affidavit independently by the Petitioner/A1, as well as his parents, she is in need of proper care and protection as she is in family way. It is not in dispute that both the parties are close relatives, even prior to the occurrence, as the mother of the Petitioner/A1 and the victim girl's maternal grand mother are sisters.

9. Learned Counsel appearing for the Petitioner in support of his contention submitted a decision rendered by the Hon'ble Apex Court S. Varadarajan Vs. State of Madras, , wherein the Supreme Court has held as follows:

When the girl (who though a minor had attained the age of discretion and is on the verge of attaining majority and is a senior college student) from the house of the relative of the father where she is kept, herself telephones the accused to meet her at a certain place, and goes there to meet him and finding him waiting with his car gets into that car of her own accord, and the accused takes her to various places and ultimately to the Sub-Registrar's Office where they get an agreement to marry registered, and there is no suggestion that this was done by force of blandishment or anything like that on the part of the accused but it is clear from the evidence that the insistence of marriage came from her side, the accused by complying with her wishes can by no stretch of imagination be said to have "taken" her out of the keeping of her lawful guardianship, that is, the father.

10. In the instant case, it is seen that the alleged victim girl has completed 17

years of age and she informed the Court that she married the Petitioner and voluntarily expressed her willingness to go along with Petitioner/A1 and other co-accused, as she is in her family way. It is an admitted fact that the Petitioner herein and his parents have given undertaking to provide proper care and protection to the alleged victim girl by way of filing separate affidavit and they were properly identified by the Inspector of Police and the learned Government Advocate.

11. On the aforesaid facts and circumstances of the case, to meet the ends of justice this Court finds it reasonable to allow the Criminal Revision Petition, accordingly, the impugned order passed by the learned Judicial Magistrate, Uthamapalayam in Crl.M.P. No. 20957 of 2010, dated 02.11.2010 is set aside and the alleged victim girl is permitted to go along with the Petitioner/A1 and his parents in order to get proper care and protection, as she is in family way. The Criminal Revision Petition is allowed on the above terms.