
(2003) 10 MAD CK 0204

In the Madras High Court

Case No : Criminal Revision Case No. 1263 of 2003

N. Balaji

APPELLANT

Vs

Smt. Savithiri and Sub Inspector of Police

RESPONDENT

Date of Decision : 08-10-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401

Citation : (2004) CriLJ 2818 : (2004) 4 RCR(Criminal) 165

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : B. Kumar for P. Srinivasan, for the Appellant; V. Gobinath for Muthuramalingam, for first respondent and K. Abudukumar Rajarathinam, Government Advocate (Criminal Side) for second respondent, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The above Criminal Revision Case has been filed praying to call for records relating to the order dated 13.12.2002 made in CrI.M.P. No. 4095 of 2002 passed by the Judicial Magistrate No. III, Dindigul and to quash the same as void and without jurisdiction.

2. Heard the learned Senior Counsel appearing for the revision petitioner, the first respondent as well and the learned Government Advocate on the Criminal Side appearing for the second respondent.

3. On a perusal of the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the revision petitioner had married one O.K. Praia, the daughter of the first respondent herein on 21.11.2002 by registering their marriage before the competent authority. Transfer certificate of the said P.K. Priya, has been produced before the registering authority to satisfy that P.K. Priya has become a major. The revision petitioner and P.K. Priya, had also admittedly lived as husband and wife for about 15 days. It seems that the matter has been taken up before the Dindugul North

Police Station, the second respondent herein and an agreement in writing giving up all the rights of P.K. Priya in the property of her parents' family and also relationship, has been executed and handed over to her parents.

4. Admittedly, the first respondent herein had lodged a private complaint before the Judicial Magistrate No. III, Dindugul against the revision petitioner stating that the revision petitioner had kidnapped and married her minor daughter, viz., P.K. Priya and that therefore, the custody of her minor daughter, viz., P.K. Priya should be given to her. The learned Judicial Magistrate issued search warrant by order dated 10.12.2002 in Crl.M.P. No. 4095 of 2002. On the basis of the search warrant the girl Priya was handed over to her mother, the first respondent herein and so the Judicial Magistrate closed the Crl.M.P. No. 4095 of 2002, against which the revision petitioner has come forward to file this Criminal Revision Case on certain grounds as brought forth in the grounds of Criminal Revision with the prayer extracted supra.

5. A counter would be filed by the first respondent in Crl.M.P. No. 5223 of 2003 in the above Crl.R.C. to the effect that the petitioner filed Criminal Revision Case 176 of 2003 challenging the impugned proceedings in Crl.M.P. No. 4095 of 2002 of the Judicial Magistrate No. III, Dindigul and the same was dismissed on 24.2.2003 by the High Court in which the above fact was suppressed and hence the petitioner has not approached to the Court with clean hands; that the petitioner forcibly kidnapped the daughter of the first respondent and married her against her will and detained her with him illegally in order to grab money from her husband; she would further state that the petitioner filed Habeas Corpus petition No. 2628 of 2003 and on 5.2.2003 her daughter appeared before the Division Bench, she was allowed to stay with her parents as she had expressed her willingness to continue to live with them to facilitate her studies; that the learned Division Bench remarking that the daughter of the first respondent was not in wrongful confinement of her parents, dismissed the Habeas Corpus Petition; that the reasons assigned for condoning the delay of 14 days in filing the Criminal Revision Case is not bona fide. On such averments, the first respondent would pray to dismiss the above Crl.M.P. filed by the petitioner for condonation of delay of 14 days.

6. During arguments, the learned senior counsel appearing on behalf of the petitioner would point out the Transfer Certificate of the wife of the petitioner and the daughter of the first respondent namely P.K. Priya, as per the T.C. No. 67/2002 issued by the Akshaya Vidyalaya Matriculation & Higher Secondary School showing that she was born on 15.10.1984 and as such she was a major even on the date of marriage with the petitioner, on 21.11.2002, no mention need be necessary that on the date of occurrence that was on 20.11.2002 she was very well a major and neither the complaint given by the first respondent to Judicial Magistrate No. III Dindigul was true to the facts nor had the orders passed by the said Court dated 13.12.2002 entrusting the custody of the said girl with the mother, the first respondent, since the Magistrate u/s 98 of the Cr.P.C.

did not have the power to act in the manner either to pass such orders or to entrust the custody of a major girl which was deliberate, illegal and in excess of his jurisdiction and the same has to be declared null and void.

7. On the contrary, the learned senior counsel appearing on behalf of the first respondent would submit that it was the Division Bench after ascertaining from the girl ordered to go along with her parents and therefore, there is nothing fishy in the girl being sent along with the parents for continuing her studies and therefore, the above Criminal Revision Case only becomes liable to be dismissed and would pray to dismiss the same accordingly.

8. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned senior counsel for both, what comes to be known is that the petitioner claiming the said P.K. Priya as his wife since their marriage was solemnized on 21.11.2002 getting it registered with the Registrar of Marriages wherein not only in the Transfer Certificate of the School records of the girl, but also in the Marriage Certificate issued by the Registration Department, her date of birth was 15.10.1984 thereby making it very clear that on the date of the registration of the marriage in between the petitioner and the said P.K. Priya, she was a major and only with the consent of the girl the marriage was solemnized and registered as on 21.11.2002 in the presence of the Registrar of Marriages and therefore, in the above circumstances the only point that rages supreme for consideration and determination of the pleadings and prayer of the above Criminal Revision Case is whether the order passed by the Judicial Magistrate No. III, Dindigul dated 13.12.2002 in C.M.P. No. 4095 of 2002 was either legal or and the same has to be quashed as it is prayed for in the above Criminal Revision Case?

9. Merely accepting the version of the mother, the first respondent herein, the lower Court has bluntly ordered in its order dated 10.12.2002 thereby directing the Superintendent of Police, Tiruvellore District to secure the girl P.K. Priya and the said police have immediately carried out the direction within three days culminating the girl being produced before the said Magistrate by the said police in the presence of the first respondent and her counsel absolutely without verification of any of the relevant factors regarding the plight of the girl or what had happened during the period in between 20.11.2002 from when onwards she was reported to have been missing till the time of causing production of the said girl before the Magistrate on 13.12.2002 based on the order passed by the same Magistrate on 10.12.2002 and a totally blunt one sentence order has been passed stating "since the girl one Priya is handed to her mother this petition is closed." without analysing anything, particularly regarding her age in order to find out whether she was a minor or major and the reason for her leaving the parents and joining the petitioner and regarding the marriage that has been solemnised between them and whether she was taken by the police forcibly in pursuance of the order passed by this Court or did she willingly go along with the police etc., which are relevant for consideration since in such event bluntly

handing over the girl to the parents would endanger even the life of the girl and therefore, giving her a breathing time of a day or two keeping her in Home the Magistrate should have ascertained the age of the girl particularly when it is disputed and should have known the mental condition of the girl without being influenced by any of these parties and only after ascertaining the age of the girl and her views and willingness a decision could have been arrived at by the Magistrate, whereas in the case in hand the Magistrate has only acted against the warranting procedures established by law in a one sided manner absolutely without giving any opportunity for the girl to speak out her mind and as though treating her dump founded animal, the Magistrate has acted in a biased manner absolutely bereft of any reason or legal consideration but only acting as an instrument of the first respondent for reasons known to himself. Nor u/s 98 of Cr.P.c. did the Magistrate have any jurisdiction on a major girl who volunteer to quit home and get married with the person of her choice as revealed by documents placed on record and therefore, it has to be held that the Magistrate did not have jurisdiction to pass such orders u/s 98 of the Cr.P.C. and no doubt the order dated 13.12.2002 made in C.M.P. No. 4095 of 2002 by the Court of Judicial Magistrate No. III, Dindigul in law, only becomes liable to be quashed as it is prayed for on the part of the petitioner and hence the following order:

In result,

- (i) the above Criminal Revision Case succeeds and the same is allowed;
- (ii) the order dated 13.12.2002 made in CrI.M.P. No. 4095 of 2002 passed by the Judicial Magistrate III, Dindigul is quashed.