

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

RPFC.No. 265 of 2014 ()

**-----
AGAINST THE ORDER IN MC 627/2012 of FAMILY COURT, NEDUMANGAD
DATED 04-06-2014
-----**

REVISION PETITIONER/RESPONDENT :

**REJITH,
S/O.SATHEESAN, BSNL QUARTERS, KAIMANAM,
PAPPANAMCODE P.O., THIRUVANANTHAPURAM DISTRICT.**

**BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR**

RESPONDENT(S)/PETITIONER :

**VAIJAYANTHI. O., AGED 40 YEARS
SUJITH BHAVAN, MELAMCODU, NEDUMANGAD P.O.,
KARIPPOOR VILLAGE, THIRUVANANTHAPURAM 695 541.**

BY ADV. SRI.A.S.SHAMMY RAJ

**THIS REV.PETITION (FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 26-05-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

AMV

K.HARILAL, J.

.....
R.P.(FC) No.265 of 2014 ()

.....
Dated this the 26th day of May, 2015

ORDER

The petitioner is the respondent in M.C. No. 627 of 2012 on the files of the Family Court, Nedumangadu. The above M.C. was filed by the respondent, herein, claiming maintenance allowance from the petitioner under Section 125 of the Cr.P.C.

2. According to the respondent, she is the wife of the petitioner and their marriage was solemnised on 04.12.2006. Subsequently, they lived together as husband and wife at the residence of the respondent till 10.11.2011. Thereafter, the petitioner wilfully neglected and refused to pay maintenance allowance to the respondent. The respondent has no job or income and she is unable to maintain herself, whereas the petitioner is working as a clerk in BSNL and drawing a monthly salary of Rs. 30,000/- per month. The respondent claimed the maintenance allowance at the rate of Rs.

10,000/- per month. The petitioner filed an objection contending that the respondent is not the legally wedded wife of the petitioner. But, he himself admitted that he was compelled to sign a marriage agreement by way of coercion and undue influence exerted by the respondent. The petitioner further admitted that the respondent was a tailor and thereby he got acquaintance with her and thereafter they were living together and indulged in sexual intercourse. It is also contended that even prior to the marriage with the petitioner, the respondent got married and out of that wedlock she has a son and a daughter. Though, he filed O.P.No. 1043 of 2008 challenging the legal validity of marriage agreement entered into between the petitioner and respondent, the same was got dismissed for default. Further, it is stated that the petitioner married again on 31.05.2012, and a male child was born. Since she is not the legally wedded wife of the petitioner, she is not entitled to get maintenance allowance.

3.The respondent was examined as PW1 and Exts. P1 to P7 were marked. The petitioner was examined as CPW1 and Exts.R1 and R2 are marked.

4.After considering the evidence on record, the court below passed the impugned order directing the petitioner to pay maintenance allowance @ Rs. 4,000/- to the respondent. The legality of the entitlement of the maintenance allowance and correctness of the quantum of amount fixed by the court below are under challenge in this revision petition.

5.The learned counsel for the petitioner advanced arguments *in extenso* contending that the respondent is not entitled to get maintenance allowance as she is not the legally wedded wife of the petitioner. The learned counsel drew my attention to Ext. P7 judgment passed in O.P. No. 1043 of 2008 filed by the respondent, by which, she got a decree granting dissolution of marriage with her earlier husband by name Suresh. According to

the learned counsel, since the legally valid earlier marriage was dissolved only on 20.11.2009, it cannot be held that respondent is the wife of the petitioner, who is entitled to get maintenance allowance. The sum and substance of the argument is that so long as the earlier legal marriage subsists as such, the respondent/petitioner cannot claim the status of a wife as the second marriage is void. But the court below miserably failed to consider the legality of the marriage in its correct perspective. It is also contended that the quantum of maintenance allowance determined by the court below is disproportionate with the income of the petitioner and it is too excessive.

6.Per contra, the learned counsel for the respondent advanced arguments to justify the finding that the respondent is the wife, who is entitled to get maintenance allowance from the petitioner. According to him, the oral evidence given by the respondent coupled with Exts.P1 to P3 would sufficiently prove the

marital status of the respondent as wife of the petitioner. It is also contended that the legal validity of the marriage need not be considered meticulously for considering the claim of maintenance. If there is evidence to show that, the petitioner and the respondent are lived together as husband and wife in the eye of the society, the same is sufficient to grant maintenance allowance under Section 125 of Cr.P.C. According to the learned counsel, the admissions of the petitioner in Exts.P1 to P3 recognising the status of the respondent as wife is sufficient enough to claim the maintenance allowance.

7.In view of the rival contentions the short question that arises for consideration is whether there is any illegality or impropriety in the finding that the respondent is the wife of the petitioner, who is entitled to get maintenance allowance from the petitioner.

8.Going by the impugned order, it is seen that the

respondent has claimed that she is the wife of the petitioner, the petitioner disputed the status as wife; but at the same time, he himself admitted that they lived together and indulged in sexual intercourse. It is also admitted that, they have entered into a marriage agreement. But, according to him, he was compelled to sign the agreement by coercion and undue influence exerted by the respondent. In this context, it is pertinent to note that, though, he had filed O.P.No. 1043 of 2008 to set aside the said marriage agreement, the said petition was dismissed for default and the petitioner has not perused the same further. The scope and extent of the legality of the marriage to claim the status of wife as contemplated under Section 125 of the Cr.P.C. was considered by the Apex Court in various decisions such as **Janaki Amma v. Rama Warriar [1985 KLT 283]**, **Petricia v. Purushothaman [2006 (2) KLT 800]**, **Chammunny v. Virendra Kumar Pushpa [2010 (4) KLT (SN) 30]**, & **Pyla Mutyalamma alias Satyavathi v. Pyla Suri Demudu and another [2011 (3) KLT**

815]. In 2011 (3) KLT 815, the Supreme Court held that if the evidence led in a proceedings under Section 125 of Cr.P.C., raises a presumption that applicant was the wife of the respondent, it would be sufficient for the Magistrate to pass an order granting maintenance.

9. The proposition that can be culled out from the above decisions is that the nature of proof of marriage required for a proceeding under Section 125 of the Cr.P.C. need not be so strong or conclusive as in a criminal proceeding for an offence under Section 494 of Indian Penal Code. Since the jurisdiction of Magistrate under Section 125 of Cr.P.C. being a preventive in nature, the Magistrate cannot usurp the jurisdiction in matrimonial dispute possessed by Civil court. The Magistrate has to find in a proceedings under Section 125 of Cr.P.C., whether there are some marriage ceremonies between the parties, whether they have lived as husband and wife in the eyes of their neighbours, whether the children were born out of their

union. If the evidence led in a proceedings under Section 125 of Cr.P.C., raises a presumption that the applicant was the wife of the respondent, it would be sufficient for the Magistrate to pass an order granting maintenance under the proceedings.

10. Going by the impugned order, it is seen that the court below relied on the judgment in 1985 KLT 283 and 2006 (2) KLT 800 (*cited supra*) and appreciated the facts of the instant case. In view of the above propositions, the learned Family Court Judge found that the admissions made by the petitioner himself in Exts.P1 to P3 recognising the status of the respondent as his wife, coupled with the oral evidence of the respondent and the matters brought out in evidence by the cross examination of the petitioner are sufficient to arrive at a finding that they have lived together as husband and wife in the eyes of the society, and thereby, the respondent is entitled to get maintenance allowance. It is pertinent to note that the learned Family Court Judge

has not considered the legal validity of the marriage. He made an enquiry to the extent of her claim under Section 125 of the Cr.P.C., as wife, in view of the legal position settled by the Apex Court. I do not find any illegality or impropriety in the said findings.

11.The next point to be considered is that whether Ext.P7 judgment granting dissolution of marriage on 20.11.2009 would dis-entitle the claim of the respondent as wife. It is true that when a legally valid marriage is subsisting, there is no possibility to have another marriage under the Hindu law. But it is to be remembered that such an enquiry is not contemplated for considering a claim under Section 125 of Cr.P.C., in view of the legal position well-settled by the Supreme Court by the above decision and the learned Family Court Judge has not ventured to consider the legality of the marriage.

12.Going by Ext.P7 judgment, it is seen that the

respondent's earlier marriage was dissolved on 20.11.2009. It is true that upto 20.11.2009, she cannot claim the marital status as legally wedded wife of the petitioner. It is pertinent to note that this M.C. was filed in the year 2012 only and her specific case in the M.C. was that they had lived together as husband and wife till 10.11.2011 and the petitioner neglected and refused to pay maintenance allowance from 10.11.2011 only. It shows that even after the dissolution of marriage, they lived together as husband and wife for a considerable period of three years and she has no case for a past maintenance for a period before 2009 and the court has awarded maintenance allowance from the date of petition only. I am of the opinion that the above point raised by the learned counsel for the petitioner, would come into application only if the claim was for a period before 2009. Since the claim is for future maintenance from 2012, the above question cannot be considered and it cannot be held that the petitioner is not entitled to claim maintenance allowance since the marriage was

dissolved on 20.11.2009 only. Therefore, there is no illegality or impropriety in claiming maintenance allowance, notwithstanding Ext.P7 judgment. Put it differently Ext.P7 is of no consequences at all while considering the right of maintenance under Section 125 (1) of Cr.P.C.

13.Coming to the quantum of maintenance allowance, it is not disputed that the petitioner is working as a clerk in BSNL. If that be so, the court below can be justified in fixing maintenance allowance at the rate of Rs. 4,000/- per month. The quantum of maintenance allowance determined by the court below is just and proper and no interference is called for.

This revision petition is dismissed as above.

Sd/-
K.HARILAL,
JUDGE.

AMV/01/06/

/TRUE COPY/

P.A.TO JUDGE