

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-06-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No. 162 of 2015

Janaki
@ Nancy Janaki

.. Petitioner

Versus

John Kennedy

.. Respondent

Criminal Revision Case filed under Section 397 read with Sec. 401 of Cr.P.C. against the order dated 28.08.2014 passed in M.C. No. 165 of 2005 on the file of the I Additional Principal Judge, Family Court, Chennai.

For Petitioner : Mr. R.Kamaraj

For Respondent : Mr. G.Hariharan
Amicus Curiae

ORDER

This Criminal Revision Case is filed by the petitioner/wife questioning the correctness of the quantum of maintenance ordered by the I Additional Principal Judge, Family Court, Chennai, in M.C. No. 165 of 2005, dated 28.08.2014. By the said order, the Court below partly allowed the Maintenance Case filed by the petitioner/wife by directing the respondent/husband to pay maintenance at the rate of Rs.1,000/- per month to the petitioner/wife from the date of petition and the respondent is further directed to continue to pay the maintenance on or before 5th of every English Calendar month and also to pay the arrears.

2. Mr.R.Kamaraj, learned counsel appearing for the petitioner vehemently contended that the respondent/husband has deserted the petitioner/wife and he is living with another woman. He would further add that the respondent is running a business in the name of "Arunodhayam Fire Works" at Sivakasi and he is also carrying on the repair works of refrigerator and doing T.V.service under the name and style of "Jai Agencies", apart from running crackers business in Bangalore, for which, the licence is produced, therefore, seeking for enhancement of maintenance amount from Rs.1,000/- to Rs.10,000/- per month this Criminal Revision Case is filed.

3. Notice as well as private notice were served on the respondent. The name of the respondent was also printed in the cause list. In spite of the same, since, there was no representation for the respondent, Mr.G.Hariharan, is appointed as Amicus Curiae to appear and represent on behalf of the respondent.

4. Mr.G.Hariharan, who is appointed as Amicus Curiae to represent on behalf of the respondent, would mainly contend that there was no valid marriage took place between the petitioner and the respondent, as the petitioner was a Hindu and the respondent was a Christian at the time of marriage and therefore, the respondent is not liable to pay any maintenance to the petitioner. He would further submit that the Lower Court has categorically held that to prove that the respondent is doing any Fire Work business, there is no proper evidence. He would further add that merely, because, the respondent has applied for licence to Sales Tax Officer to do Fire Work business, it does not mean that the respondent is running the said business, especially in this case, when the Sales Tax Officer has returned the security deposit amount of Rs.2,500/- to the respondent, therefore, the manufacture or sale of Fire Works has not been clearly proved, hence, the Court below has rightly fixed the maintenance amount.

5. I heard the counsel for both sides and also perused the materials available on record. By consent, the main Criminal Revision Case itself is taken up for final disposal.

6. On a perusal of the materials available on record, it is seen that the marriage between the petitioner/wife and the respondent/husband took place on 29.01.1992. Earlier, the respondent/husband filed a divorce petition in O.P.No.1 of 1995 before the Subordinate Court, Srivilliputhur; that was dismissed on 02.02.1997. The respondent/husband has earlier filed O.S.No.134 of 2006 on the file of the District Munsif Court, Sivakasi, to declare that there is no valid marriage held between the petitioner and the respondent; that suit was dismissed. As against which, the respondent/husband filed an appeal in A.S.No.21 of 2007 on the file of the Subordinate Court, Sivakasi, which was allowed. As against the same, the petitioner/wife preferred S.A.No.894 of 2008 before the Madurai Bench of Madras High Court; that Second Appeal was allowed on 27.01.2009. As against the same, the respondent/husband preferred S.L.P.Civil No. 33752 of 2009 before the Hon'ble Supreme Court of India. On 06.08.2010, the above S.L.P. was dismissed by the Hon'ble Supreme Court of India, thereby, the marriage is ultimately held valid. The petitioner/wife has filed M.C.No. 165 of 2005 before the I Additional Principal Judge, Family Court, Chennai, claiming maintenance of Rs.10,000/- towards maintenance. Further, it is seen that according to the petitioner/wife, the respondent/husband is owning property worth Rs.20,00,000/- and the respondent is also getting rental income of Rs.30,000/- per month. Ultimately, after hearing both parties, the lower Court has fixed a sum of Rs.1,000/- per month as maintenance, against the claim of maintenance of Rs.10,000/- only on the ground that to prove that the respondent is doing Fire Work business, in the name of "Arunodhayam Fire Works", no proper evidence is produced. Further more, merely, because, the respondent has applied for licence to Sales Tax Office to do Fire Work business, it cannot be said that the respondent is running the said business, especially in this case, when the Sales Tax Officer has returned the security deposit amount of Rs.2,500/- to the respondent, the manufacture or sale of Fire Works has not been clearly proved, therefore, the Court below has fixed the meagre maintenance amount of Rs.1,000/- per month. Aggrieved against the

same, the present Criminal Revision Case is filed by the wife.

7. From the facts and circumstances enumerated above, it is seen that the marriage between the petitioner/wife and the respondent/husband has been confirmed right upto the Supreme Court and therefore, the respondent/husband cannot now contend that there is no valid marriage held between the petitioner and the respondent. Further more, it is seen that the respondent during the cross-examination has admitted before the Lower Court that he has not married another woman, but, he is living with another woman, therefore, now the question of correctness of the quantum of maintenance awarded by the Lower Court alone has to be decided by this Court. As far as the quantum of maintenance is concerned, the Court below, taking into consideration the evidence available on record has awarded a sum of Rs.1,000/- as maintenance, this according to the petitioner/wife is very meagre. On the other hand, the learned counsel appearing for the respondent/husband would contend that the quantum of maintenance awarded by the Lower Court is correct and it needs no interference at the hands of this Court.

8. In this case, admittedly, a sum of Rs.1,000/- was awarded as maintenance amount by the Lower Court. In today's cost of living, we cannot live with the meagre amount of Rs.1,000/-. No doubt, the petitioner/wife is able to produce certain documents to show that the respondent/husband is doing business. Per contra, the respondent/husband has not produced any document to show that the income as stated by the petitioner/wife is wrong, no doubt, the letter sent by the Sales Tax Officer returning the security deposit amount to the respondent is an exception. Taking into consideration that the petitioner/wife has been driven from pillar to post for the last so many years and she has been unnecessarily harassed and to maintain her life, she need subsistence allowance for which the basic requirement will be atleast Rs.4,000/- (Rupees Four Thousand) per month. Therefore, in my considered opinion, the respondent/husband must be directed to pay atleast Rs.4,000/- per month as maintenance to ensure that the petitioner/wife has to survive, which will be a reasonable amount.

9. In the result, this Criminal Revision Case is partly allowed and the order dated 28.08.2014 passed in M.C. No. 165 of 2005 on the file of the learned I Additional Principal Judge, Family Court, Chennai, is modified to the extent of enhancing the maintenance amount from Rs.1,000/- to Rs.4,000/- per month. The respondent/husband is directed to pay the enhanced maintenance of Rs.4,000/- per month from the date of petition viz., 30.03.2005 till date within a period of four months and the respondent/husband is further directed to continue to pay the maintenance of Rs.4,000/- per month on or before 5th of every succeeding English Calendar month.

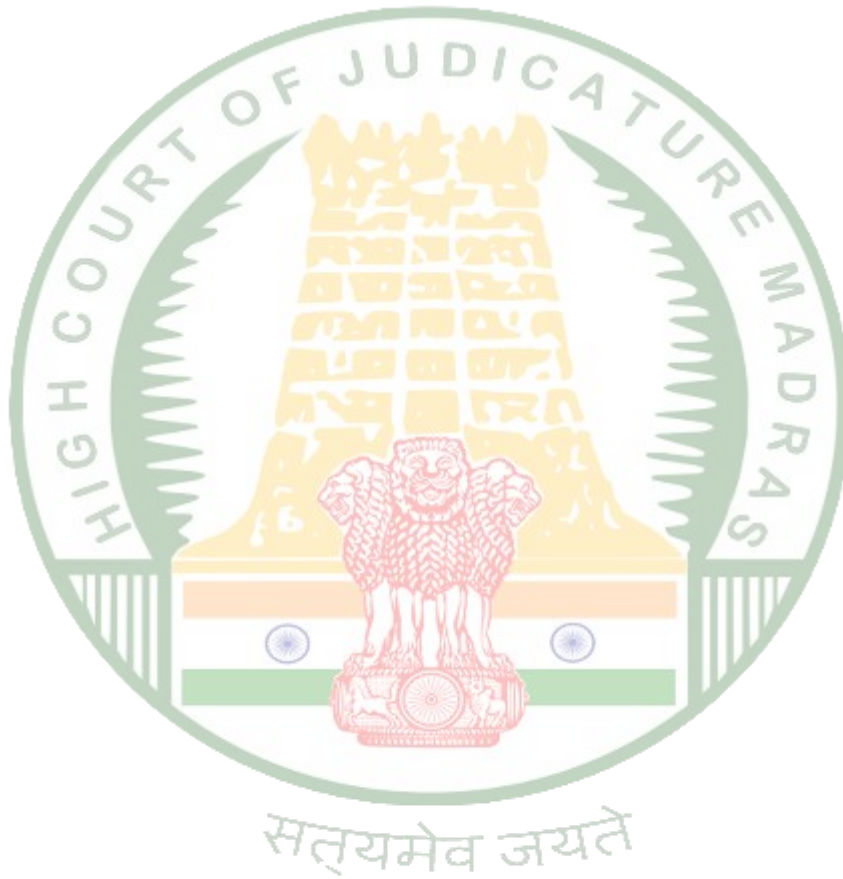
Sd/-

Assistant Registrar

paa
To
The I Additional Principal Judge,
Family Court, Chennai.

Cr1.R.C. No. 162 of 2015

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pmk.19.6.2015



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