

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM:

THE HONOURABLE DR. JUSTICE P. DEVADASS

Crl.R.C.No.1073 of 2011
and
M.P. No. 1 of 2011

D. Mohanraj ... Petitioner/ Respondent

vs

Smt. Valarmathi ... Respondent/ Petitioner

PRAYER: This Criminal Revision Petition is filed under Section 397 r/w 401 Cr.P.C., against the order dated 22.06.2011 passed by the learned Family Court Judge, Coimbatore in M.C. No. 32 of 2009 awarding maintenance to the respondent herein.

For Petitioner : Mr. C.S. Dhanasekaran

For Respondent : Mr. S. Baskaran
(Legal Aid Counsel)

ORDER

This revision is by an husband against his wife.

2. The revision petitioner married the respondent, on 17.06.2005, in Coimbatore. Subsequently, difference of opinion arose between them. The respondent/wife came back to her parent's home. In M.C. No.32/2009 in the Family Court, Coimbatore she claimed maintenance under Section 125 CrPC. The respondent filed a counter opposing the same.

3. The respondent examined herself as PW-1 and marked Exs. P-1 to P-6, while the revision petitioner examined himself as RW-1, Duraiswamy and Krishnappan as PWs 2 & 3 and marked copy of Patta as Ex.R4.

4. Appreciating the said evidence, the Family Court ordered him to pay her Rs.1250/- per month, from the date of Maintenance Petition.

5. Learned counsel for the revision petitioner contended that without any sufficient cause or reason, the respondent had left her husband. Yet, he called her back. However, she did not return nor took any steps to rejoin him. She has deserted him.

6. Learned counsel for the revision petitioner further contended that even at the time of marriage, the revision petitioner revealed his early marriage with one Chitra Devi and also has shown the earlier marriage certificate. The respondent is bluffing that Chitra Devi's marriage with him has been kept as a secret.

7. Learned counsel for the revision petitioner also contended that the Trial Court has heavily relied upon Ex.P5. The original of it has not been marked. Ex.P5 has not been legally brought on record. Therefore, Ex.P5 has to be eschewed from the evidence.

8. On the other hand, the learned counsel for the respondent contended that the revision petitioner's first marriage with Chitra Devi was not revealed to the respondent, before his marriage with the respondent. She came to know about it, only few days after her marriage, from the neighbours. As her matrimonial life was not so conducive, she came back to her parent's house.

9. Learned counsel for the respondent further contended that Ex.P5 has been admitted by the revision petitioner in his evidence. Ex.P5 and Ex.P1 Marriage Invitation, all goes to show that the revision petitioner has sufficient means. Section 125(4) CrPC will not apply to this case.

10. I have anxiously considered the rival submissions and perused the impugned order and the materials on record.

11. As on date, the marriage between the revision petitioner and the respondent continues. In her Ex.P2 Lawyer's notice, the respondent has specifically mentioned that the revision petitioner was already married to one Chitra Devi and this was not revealed to her earlier. The fact that the revision petitioner was already married to

Chitra Devi, is not in dispute. In his Ex.P6 reply notice, no where the revision petitioner had mentioned about his marriage with Chitra Devi. Ex.P5 bio-data of the revision petitioner could not be denied by him. In Ex.P5 the revision petitioner furnished his astrological details and other particulars but he has not mentioned about his earlier marriage with Chitra Devi or what happened to Chitra Devi. In such circumstances, the contention of the revision petitioner that only upon showing his marriage registration certificate relating to Chitra Devi, the respondent's father gave his daughter, cannot be accepted.

12. The respondent took it very seriously. She did not want to take it lightly.

13. Now, the situation is such that the respondent has to go to her parent's house. In her cross examination, it is stated that she had not filed any case for her re-union with her husband. But, it is not a condition precedent. The wrong person is the revision petitioner. He must have convinced the respondent and taken her back.

14. As regards the financial capacity of the revision petitioner, in Ex.P5 itself it is stated that he was earning. In Ex.P1 Marriage Invitation, the revision petitioner has been shown as the owner of Sri Vel Industries. So he is an industrialist but not a millionaire because he is earning only Rs.10,000/- per month.

15. As per Ex.P5 he is a propertied person and there are residential income yielding properties. Though, it is seen that the revision petitioner has sufficient means to maintain his wife, on the other hand, there is no evidence to show that the respondent has any financial capacity to maintain herself. In the above facts and circumstances, the finding of the trial court that the revision petitioner is bound to pay her maintenance, cannot be faulted.

16. The respondent is living in Coimbatore. In such a city, Rs.1250/- per month cannot be said to be a fabulous amount. In my considered opinion, it will be not too much. It is too low amount. In such circumstances, there is no acceptable reason or ground to interfere with the impugned order.

17. In view of the foregoing, this revision fails and it is dismissed. Consequently, the connected M.P is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

avr

To

1. The Judge,
Family Court
Coimbatore.
2. The Secretary
High Court Legal Services Committee
Chennai.
3. Mr. S. Baskaran,
Advocate,
No.402 Additional Law Chambers,
High Court Campus,
Chennai-104.
- appointed by this Court to provide legal assistance.
Issue free copy of this order.

+1cc to Mr.Dhanasekaran, Advocate, S.R.No. 69479

CNR(CO)
RS(18/01/2017)

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and
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