

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-12-2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

Cr1.R.C.No.775 of 2011

and

M.P.No.1 of 2011

Siva @ Sivaraman .. Petitioner / Respondent

Vs.

1.Shanthi

2.Minor Ramachandran

3.Minor Jaisree

4.Minor Raji

(R-2 to R-4 represented by their

next friend Mother Shanthi/R-1) ... Respondents/Petitioners

This Criminal revision is preferred under Sections 397 and 401 of Cr.P.C., against the order dated 21.2.2011 made in C.M.P.No.158 of 2010 in M.C. No.44 of 2010 by the learned Judge, Family Court, Salem.

For Petitioner : Mr.A.Karthikeyan for
Mr.M.T.Arumugham

For Respondents : Mr.R.Marudhachalamurthy

सत्यमेव जयते

O R D E R

This revision is by the respondent in M.C.No.44 of 2010 on the file of the Family Court, Salem.

2. Respondents 1 to 4 are mother and children. They sought for maintenance in M.C.No.44 of 2010 in the said Court under Section 125 (1) Cr.P.C.

3. In the said petition in CMP No.158 of 2010, they have sought for interim maintenance.

4. The revision petitioner in his counter, indirectly denies his marriage with the first respondent herein.

5. After hearing both sides, perusing the pleadings, on 21.2.2011, by his order, the learned Judge, Family Court, Salem, granted Rs.600/- each totalling to Rs.2,400/- per month to the respondents till the disposal of the main maintenance petition.

6. Aggrieved, the husband has directed this revision.

7. The learned counsel for the revision petitioner contended that the first respondent is not the wife of the revision petitioner. In fact, he was shocked when he received a lawyer's notice from her.

8. The learned counsel for the revision petitioner further contended that Section 24 of Hindu Marriage Act, 1955 will not apply to this case. Further, it is stated that the revision petitioner is having a Power Loom, but there is no material to establish this.

9. On the other hand, the learned counsel for the respondents would submit that the Birth Certificates of Respondents 2 to 4 would show that the children were born to the first respondent through the revision petitioner, but to deny them maintenance, the revision petitioner came forward with a cock and bull story.

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

11. Respondents filed the petition under Section 24 of the Family Court Act. But the Section is not correct. Section 24 of the Hindu Marriage Act, 1955 also deals with grant of interim maintenance.

12. The main petition is filed under Section 125 (1) Cr.P.C. By way of an amendment to Section 125 Cr.P.C, claiming of interim maintenance in such cases also now provided.

13. In I.A like this either under Section 125 or under Section 24 of the Hindu Marriage Act or under the relevant provisions in the Indian Divorce Act, 1869, the Court need not make any roving enquiry. If prima facie, existence of marital relationship is established, that is enough.

14. In an Interlocutory Application, Miscellaneous Petition like this, the Family Court or the Magistrate need not conduct a full- fledged trial. Even based on the affidavits filed by both sides, it can be decided in a summary manner.

15. If we read the counter filed by the revision petitioner, there is no specific denial, he indirectly makes a vague statement that first respondent is not his wife. It is not sufficient. Birth Certificates of the children also has been filed. He did not say anything about the children. It (they) stares at him. Thus, a prima facie view as to the connection of the revision petitioner with the first respondent is established.

16. It is stated that he was earning through Power Loom. Of course, there is no material for the same. But it is not stated that the revision petitioner is not hale and healthy. He is able bodied. He has been directed to pay only Rs.2,400/- per month to all the four respondents. It is very less. Even to pay this paltry sum, he sheds crocodile tears. He can do coolie work to feed them. There is no wrong in it. Because he is discharging his pious/matrimonial duties.

17. In the circumstances, we are not to interfere with the impugned order passed by the Trial Court.

18. There is no point in the Family Court simply passing such orders. It must see that the revision petitioner paying the amount to the respondents. In case he fails to do so, even the Family Court can take coercive action against him.

19. In view of the foregoing, this revision fails and it is dismissed. Consequently, connected miscellaneous petition is also dismissed.

-sd/-
Assistant Registrar
/ TRUE COPY /
Sub-Assistant Registrar

Svn

To

The Judge,
Family Court, Salem.

Cr1.RC 775 of 2011

+1 cc to MR.R.MARUDHACHALAMURTHY Advocate SR.NO. 71767

+1 cc to MR.M.T.ARUMUGHAM Advocate SR.NO. 71966

ad[co]

RD 28/12/2016