

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.01.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

CrI.R.C.No.161 of 2015

&

M.P.No.1 of 2015

Saravanan .. Petitioner
S/o.Mr.Govindasamy

vs.

Chandra @ Muthammal .. Respondent

Criminal Revision filed under sections 397 and 401 Cr.P.C. to call for records in M.C.No.9 of 2010 on the file of the Family Court, Pondicherry and set aside the order dated 28.08.2014 passed in M.C.No.9 of 2010 and consequently to dismiss M.C.No.9 of 2010 filed by the respondent.

For Petitioner : Mr.D.Senthil Kumar

For Respondent : Mr.V.Raghavachari

O R D E R

This revision challenges the orders of the learned District Judge, Family Court, Pondicherry dated 28.08.2015 passed in M.C.No.9 of 2010.

2. Learned counsel for the petitioner submitted that the petitioner had married one Sarasu in the year 1977 and the claim of the respondent of having entered into marriage with this petitioner in 1985 was false. He pointed out certain typographical errors in the marriage invitation produced by the respondent as Ex.P1 towards submitting that the same was a false document. Learned counsel relied on judgment of the Apex Court in 2010 CJ (SC) 1390 (D.Velusamy Vs. Patchaiammal) to submit that when there was an earlier marriage in subsistence, the respondent would not have the status of a wife entitled to claim maintenance under Section 125 Cr.P.C. He also sought to distinguish the judgment in Badshah V. Urmila Badshah Godse and Another ((2014) 1 Supreme Court Cases 188) by submitting that in

such case the first marriage has been totally suppressed, whereas in the instant case it was the admission of PW2, a close relative of the respondent (PW1), that he knew not only the respondent but also the petitioner from a young age as they all belong to one and the same village. Therefore, the marriage between petitioner and Sarasu in the year 1977 must have been to the knowledge of all.

3. Learned counsel for respondent, on the other hand, submitted that the decision of the Apex Court in *Badshah V. Urmila Badshah Godse* and *Another* applies on all fours. There was no material to show that the respondent was aware of earlier marriage of the petitioner and the petitioner could not be permitted to take advantage of his own wrong.

4. This Court perused the depositions of PW1 and considered the rival submissions.

5. This Court may note that no question has been put to PW2 regards his knowledge of earlier marriage with Sarasu in the year 1977. Only a suggestion that Sarasu was the wife of the petitioner stands made. Finding ourselves in agreement with the finding of the trial Court, we would incorporate hereunder Paragraphs 9 to 12 of the order under challenge:

"9. In this petition and in her evidence, the petitioner stated that the petitioner and the respondent got married on 03.05.1985 at Mylam Sri Subramaniya Swami Temple as per the Hindu Rites and customs and also their marriage reception was held on the same day. In order to prove her marriage, the petitioner filed Ex.P1 to P4. Ex.P1 is the marriage invitation original in which the respondent's name and his parents name are found. The place of marriage is Sri Subramaniya Swami Devasthanam, Mylam. As per the Ex.P1 both the parties are belonging to Karuvadikuppam, Pondicherry. PW1 during her cross examination stated that after getting permission from the temple only, their marriage was held as per the Hindu Shashtra rites and customs and no photo was taken during their marriage and their reception was not held and except Ex.P1 no document was filed to prove her marriage. But she denied that no marriage was held between the petitioner and the respondent as alleged by the respondent. In order to prove her marriage, on the side the petitioner one witness Sundaramoorthy was examined as PW2. He narrated that the marriage between the petitioner and the respondent held at Mylam Sri Subramaniya Swami Temple in the year 1985 by issuing invitation and engaging Iyer/brohitar and the respondent tied thali and married the petitioner. But, the PW2

did not answer that the respondent had any earlier marriage with anybody. PW2 elaborately explained that the parents of the respondent only came to the grandfather of PW2 and they only arranged their marriage and thus the marriage of the petitioner was arranged by the elders of the family.

10. PW2 deposed that the respondent is known to him even from the tender age, the respondent and the PW2 are belonging to same village and the PW2 attended the marriage of the petitioner and the respondent. The evidence of PW2 is not at all admitted by the respondent. During his cross examination, PW2 narrated that during 1985-1990 the petitioner and the respondent were living at Mettu Street. From PW2's evidence the marriage time is between 6.00 a.m to 7.30 a.m. Eventhough any certificate or document received from the temple authority for the marriage is not filed by the petitioner, but, it is proved by the evidence of Pws 1 and 2 that the marriage between the petitioner and the respondent was solemnized on 03.04.1985 between 6.00 a.m and 7.30 a.m at Mylam Sri Subramaniya Swami Devasthanam, as per the Hindu Rites and Customs. The respondent strongly objected that the Ex.P1 is the fraudulent document. But it is not proved by the respondent. Hence, the respondent's version is not acceptable.

11. PW1 has stated that after the marriage they settled at Pondicherry and she filed Ex.P2/family ration card. In the Ex.P2 the name of respondent and address of the respondent is mentioned as Mettu Street, Karuvadikuppam, Puducherry. If the marriage of the petitioner with the respondent is not taken place as stated by the petitioner, how the name of the respondent is mentioned in the family ration card. Ex.P3 is the voter's identity card of the petitioner. In Ex.P3 also the petitioner and respondent are noted as husband and wife, residing in the same address. But the respondent submitted that the above documents are fraudulently arranged by the petitioner in this case. But, it is not proved by the respondent. Ex.P4 is the birth certificate of the petitioner's son namely Mohan. In that, the date of birth is mentioned as 15.07.1986 and the parent's name as father-Saravanan and Mother - Chandra @ Muthalu. It was duly registered as 21.07.1986. Ex.P4 is the public document. The respondent claimed that the registration of the birth of the Mohan is an unilateral declaration of the petitioner and the public document is deemed to be proved and unless and until the contrary of the

documents proved the presumption of the document is the genuine one.

12. During the trial, the petitioner filed a petition to direct the respondent to submit himself for DNA test along with the petitioner and her son Mohan, when the respondent has denied her marriage and paternity of the child. That petition was numbered as Cr.M.P.No.247 of 2012 in which this court passed an order dated 18.04.2013 and gave findings that the respondent has not specifically denied the birth of Mohan through this petitioner herein born on 15.07.1986 and dismissed that application. Regarding that finding in Cr.M.P.No.247 of 2012, if at all the respondent is having any grievance on the findings of this Court he had preferred any appeal or revision before any Appellate Court."

6. We would respectfully follow the reasoning of the Apex Court informed in Paragraphs 12 and 13 of the judgment in Badshah V.Urmila Badshah Godse:

"12. No doubt, in Chammuniya, the Division Bench of this Court took the view that the matter needs to be considered with respect to Section 125 Cr.P.C by a larger Bench and in para 41, three questions were formulated for determination by a larger Bench which are as follows:

1. Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitle the woman to maintenance under Section 125 Cr.P.C?
2. Whether strict proof of marriage is essential for a claim of maintenance under Section 125 Cr.P.C having regard to the provisions of the Domestic Violence Act, 2005?
3. Whether a marriage performed according to the customary rites and ceremonies, without strictly fulfilling the requisites of Section 7 (1) of the Hindu Marriage Act, 1955, or any other personal law would entitle the woman to maintenance under Section 125 Cr.P.C?

13. On this basis, it was pleaded before us that this matter be also tagged along with the aforesaid case. However, in the facts of the present case, we do not deem it proper to do so as we find that the view taken by the courts below is perfectly justified. We are dealing with a situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by

suppressing the factum of alleged first marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. Our reasons for this course of action are stated hereinafter:

13.1. Firstly, in Chanmuniya case, the parties had been living together for a long time and on that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of maintenance under Section 125 Cr.P.C by interpreting the term "wife" widely. The Court has impressed that if man and woman have been living together for a long time even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under Section 125 Cr.P.C. On the other hand, in the present case, Respondent 1 has been able to prove, by cogent and strong evidence that the petitioner and Respondent 1 had been married to each other.

13.2. Secondly, as already discussed above, when the marriage between Respondent 1 and the petitioner was solemnized, the petitioner had kept Respondent 1 in dark about his first marriage. A false representation was given Respondent 1 that he was single and was competent to enter into marital tie with Respondent 1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that the respondents are not entitled to maintenance by filing the petition under Section 125 Cr.P.C as Respondent 1 is not "legally wedded wife" of the petitioner? Our answer is in the negative. We are of the view that at least for the purpose of Section 125 Cr.P.C, Respondent 1 would be treated as the wife of the petitioner, going by the spirit of the two judgments we have reproduced above. For this reason, we are of the opinion that the judgments of this Court in Adhav and Savitaben cases would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the Hindu Marriage Act and therefore she has to suffer the consequences thereof. The said judgment would not apply to those cases where a man marries a second time by keeping that lady in dark about the first surviving marriage. That is the only way two sets of judgments can be reconciled and harmonised.

13.3. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125 Cr.P.C. While dealing with the application of a destitute wife and hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizen, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society."

Being in agreement with the finding of the Court below on facts and guided in law by the judgment of the Hon'ble Apex Court cited above, this Court dismiss the present Criminal Revision Case. The petitioner is directed to pay the arrears of maintenance to the respondent within a period of 3 months from the date of receipt of a copy of this order.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gpa

To

The Judge,
The Family Court,
Pondicherry

+2 ccs to Mr.D.SenthilKumar Advocate sr.1123
+1 cc to Mr.V.Raghavachari Advocate sr.566

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