



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.10.2016

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

Cr1.O.P(MD)No.64 of 2011  
and  
M.P. (MD)Nos.1 and 2 of 2011

Subramanian : Petitioner/Respondent

Vs.

Ramalakshmi : Respondent/Petitioner

**Prayer:** Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the entire records of M.C.No.27 of 2010, on the file of the learned Chief Judicial Magistrate, Srivilliputhur, Virudhunagar District and quash the same.

For Petitioner :Mr.R.Anand

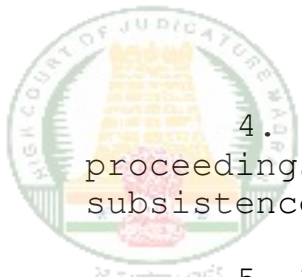
For Respondent :No Appearance

### **O R D E R**

This Criminal Original Petition has been filed to quash the proceedings in M.C.No.27 of 2010, on the file of the learned Chief Judicial Magistrate, Srivilliputhur, Virudhunagar District.

2. The Petitioner is the husband and he filed HMOP.No.161 of 2010 on the file of the Court of Sub Judge, Srivilliputhur, against the respondent as well as against his father under Section 12(1)(c) of the Hindu Marriage Act alleging among other things that the marriage was forcibly solemnized on 01.08.2010 and as such, it is not a valid marriage at all.

3. The respondent filed M.C.No.27 of 2010 on the file of the Court of Chief Judicial Magistrate, Srivilliputhur under Section 125 of Cr.P.C., claiming that despite the subsistence of the marriage, the petitioner herein has failed to maintain her and also started harassing on the pretext of dowry and hence, she claimed a sum of Rs.3000/- by way of maintenance.



4. The petitioner challenging the legality of the said proceedings on the ground that there is no valid marriage in subsistence had filed this petition.

5. Mr. R. Anand, the learned Senior Counsel appearing for the petitioner would contend that the petitioner has also filed a petition for divorce in H.M.O.P.No.161 of 2010, on the file of Court of Sub Judge, Srivilliputhur, taking a specific stand that the marriage was forcibly solemnized on 01.08.2010 and as such, the impugned Maintenance Case in M.C.No.27 of 2010 pending on the file of the Court of Chief Judicial Magistrate, Srivilliputhur, per se is not maintainable and prays for quashment of the same.

6. The Court heard the rival submission and also perused the materials placed before it.

7. Similar issue arose for consideration before the Hon'ble Supreme Court of India in the decision reported in **1999 SCC (Cri) 1345 (Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit and Another)** and it is relevant to extract the following paragraphs:-

"The validity of the marriage for the purpose of summary proceedings under [Section 125 Cr.P.C.](#), is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceedings is not as strict as is required in a trial of offence under [Section 494 I.P.C.](#) If the claimant in proceedings under [Section 125](#) of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the Court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can rebut the presumption. The appellant contended before the learned Magistrate that the said marriage was performed under duress and at the point of a knife, he was required to exchange garlands. That contention is not proved by leading necessary evidence. Once it is admitted that the marriage procedure was followed then it is not necessary to further probe into whether the said procedure was complete as per the Hindu rites in the proceedings under [Section 125 Cr.P.C.](#)"

An order passed in an application under [Section 125 Cr.P.C.](#), does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide summary remedy for providing maintenance to a wife, children and parents. After not disputing the paternity of the child and after accepting the fact that marriage



ceremony was performed, though not legally perfect as contended, it would hardly lie in the mouth of the appellant to contend in proceedings under Section 125 Cr.P.C. that there was no valid marriage as essential rites were not performed at the time of said marriage. The provision under Section 125 is not to be utilized for defeating the rights conferred by the Legislature to the destitute women, children or parents who are victims of social environment."

8. In the considered opinion of this Court, whether the marriage between the petitioner and the respondent was solemnized in accordance with the Hindu customary rites or whether it was forcibly done are the issues to be considered in the pending proceedings in H.M.O.P.No.161 of 2010, on the file of Court of Sub Judge, Srivilliputhur.

9. The Hon'ble Supreme Court of India in the above stated decision has held that the validity of the marriage for the purpose of summary proceedings under Section 125 of Cr.P.C., is to be determined on the basis of the evidence brought on record by the parties. If any order passed even an application under Section 125 of Cr.P.C., does not finally determine the rights and obligations of the parties, as it has been enacted with a view to provide summary remedy for providing maintenance.

10. Thus, in the light of the factual aspect and position, this Court is of the view that the Present Criminal Original Petition deserves dismissal and accordingly dismissed. It is also made clear that this Court has not touched upon on the merits of the claim projected by the petitioner in pending proceedings in H.M.O.P.No.161 of 2010 and the learned Sub Judge, Srivilliputhur, is directed to adjudicate the said proceedings on its own merits. Consequently, connected miscellaneous petitions are also dismissed.

**Sd/-**

**Assistant Registrar (CS-I)**

**/True Copy/**

**Sub Assistant Registrar**

To

1. The Chief Judicial Magistrate,  
Srivilliputhur,  
Virudhunagar District



2.The Sub Judge,  
Srivilliputhur,

WEB COPY

Order made in

**Cr1.O.P(MD)No.64 of 2011**

Dated:-

**07.10.2016**

**SMA/KM/08.11.2016:4P/3C**