

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2017

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.532 of 2014
and Crl.MP.No.1 of 2014

Mrs. Valarmathi ... Petitioner

//vs//

Mr. Sekar ... Respondent

Prayer : Criminal Revision filed under sections 397(1) r/w 401 of Criminal Procedure Code to allow this revision by calling for the records relating to the order passed by the Judicial Magistrate, Perambalur in M.C.No.14 of 2012 dated 24.03.2014 and revise the same by granting maintenance.

For Petitioner : Mr.R.Rajamani

For 1st Respondent : M/s. Poornima,
Legal Aid counsel.

ORDER

Challenging the order, dismissing the petitioner's application filed under Section 125 of Cr.P.C, seeking maintenance, the present revision has been

filed.

2 . The case of the petitioner in brief as follows:-

The marriage between the petitioner and the respondent was solemnized on 12.04.1986. Thereafter, nearly for 7 years, they lived together and due to their wedlock, they were blessed with a child, by name Poongodi. After that, the respondent deserted the petitioner and went to Chennai and he married one Girija and out of their wedlock also, he got three children. After the respondent deserted the petitioner, she is eking out her livelihood by doing Cooli work. Now the respondent is running a hotel at Singaperumal Koil in the National Highway Road, Chennai and he is having sufficient means. But the petitioner is struggling for her livelihood and she has also no means to maintain herself. Hence, she filed a petition seeking maintenance.

3. The above petition was contested by the respondent by filing counter affidavit, wherein he admitted the marriage with the petitioner and alleged that after marriage, the petitioner has illicit intimacy with his brother and she refused to live with the respondent, and deserted him. Apart from that, he also admitted the second marriage and got three children out of the second marriage, but denied the fact that he is running a hotel in Chennai, but he is

only working as a Cook in a hotel at Chennai.

4. During the course of trial, the petitioner examined 5 witnesses to substantiate her case and the respondent examined himself as a witness DW1 and also examined one Social Welfare Officer as Dw2.

5. After elaborate trial, the court below dismissed the application. Even though the contention of the respondent that the petitioner is living in adultery; that the daughter Poongodi is born only out of the wedlock between the petitioner and respondent's brother; and that the petitioner has deserted the respondent was disbelieved, the trial court dismissed the application holding that the maintenance application had been filed after 20 years of separation. Apart from that, while the petitioner was applying for some benefit from the Government for her daughter's marriage, in the application form, even though the respondent name is shown as her husband, somebody else's photograph has been affixed in the husband column. In the above circumstances, the Court below has come to the conclusion that the petitioner did not approach the Court with clean hands and dismissed the application. Challenging the said order, the present revision has been filed.

6. Even though notice was served on the respondent and the name was printed in the cause list, there was no representation for the respondent. In the said circumstances, Ms. Poornima was appointed as Legal Aid counsel for respondent.

7. It is an admitted case that the petitioner is the wife of the respondent. Hence, he has a legal obligation to maintain her. So far as the the respondent's contention that the petitioner is living in adultery is concerned, it has been disbelieved by the Court below. The next contention of the respondent that only the petitioner has deserted the respondent and living separately, was also disbelieved by the Court below. The main reason for dismissing the application was that there was a delay of 20 years in filing maintenance petition. Apart from that, the petitioner has not come to the Court with clean hands. But, as there is no limitation for seeking maintenance, the delay in filing the application, cannot be a ground for rejecting the petition for maintenance.

8. The next reason given by the Court below is that the petitioner has not come to the Court with clean hands. Admittedly, the Court below has held that the daughter Poongodi was born out of the wedlock between the petitioner and the respondent. While the petitioner was applying for some benefit from the government for her daughter's marriage, in the application form, she has correctly given the name of the husband as Sekar. But somebody else's photograph has been affixed in the column as husband, instead of the photograph of the respondent. From that, it cannot be presumed that the petitioner has played fraud on the Government, as the petitioner has correctly given the name of the respondent Sekar. Due to oversight, her brother's son photo has been affixed in the application. At any rate, it cannot be considered as a fraud and it is only due to oversight and it cannot be a reason for rejecting the application for granting maintenance, especially, when the court below rejecting all the defence raised by the respondent/husband. In the above circumstances, the reasons given by the Court below for dismissing the maintenance petition is not sound and proper and liable to be set aside.

9. So far as the quantum of maintenance is considered, even though the petitioner has stated that the respondent is running a hotel, it was denied by the respondent and stated that he is only working as a Cook in a hotel at Chennai. From the materials available on record, it could be seen that the respondent is having sufficient means to pay maintenance.

10. Considering the facts and circumstances of the case and that the respondent having some sufficient means and the petitioner is living without any other source of income, I am of the considered view that the petitioner is entitled for maintenance at the rate of Rs.2,500/- per month from the date of filing of this revision case before this court.

11. In the result, this Criminal Revision Petition is allowed and the order dated 24.03.2014 passed by the learned Judicial Magistrate, Perambalur in M.C.No.14 of 2012 is set aside. The respondent is directed to pay a sum at the rate of Rs.2,500/- (Rupees two thousand and five hundred only) per month from the date of filing of this Revision Petition and to pay the arrears of maintenance amount from the date of filing of the revision till today, within a period of 12 weeks from the date of receipt of a copy of this order.

Consequently, connected miscellaneous petition is closed.

12. While parting with the case, this Court appreciates the services rendered by Ms. Poornima, learned counsel, who appeared on behalf of the respondent, as legal aid counsel. The Legal Services Authority is directed to pay her remuneration.

20.06.2017

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Index : yes/no
Internet : yes/no
Speaking order/non-speaking order

To

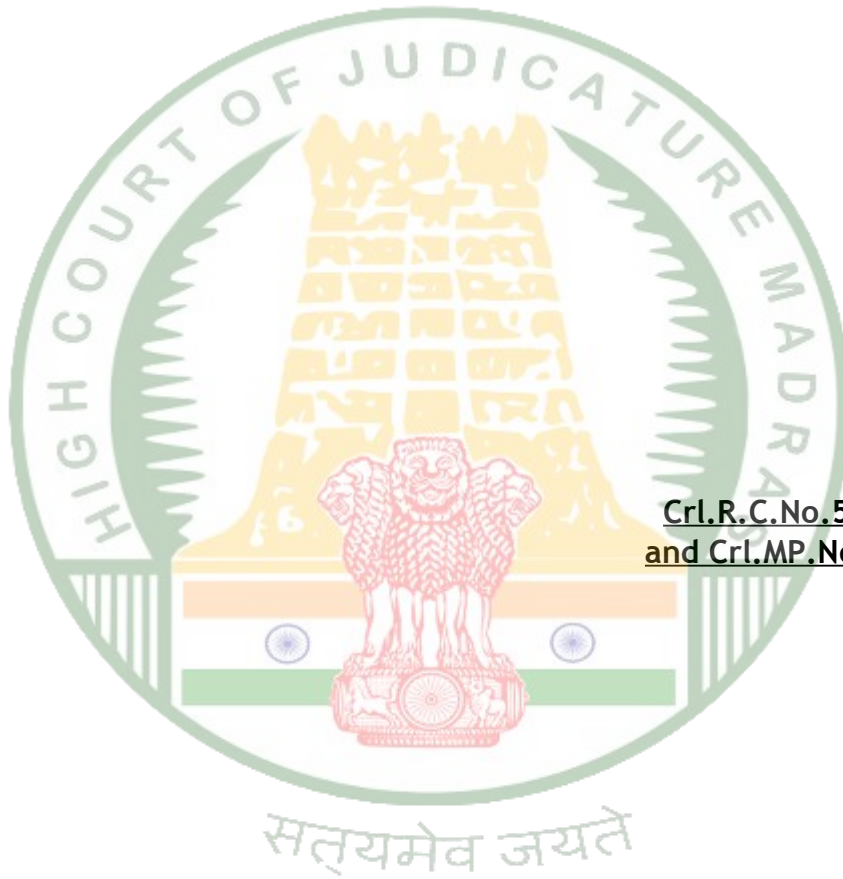
The judicial Magistrate,
Perambalur .



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V.BHARATHIDASAN,J

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