

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON : 21.07.2017

PRONOUNCED ON: 13.11.2017

CRL.RC. NO.587 OF 2011 AND M.P.NO.1 OF 2011

AND

CRL.M.P.NO.2351 OF 2017

Saba @ sabanayagam ... Petitioner/Respondent

..Vs..

1.Aanandhi

2.Raghunath

S/o.Saba @ Sabanayagam

Represented by 1st respondent ... Respondents/Petitioners

Prayer:- Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., against the order dated 28.03.2011 passed by the learned District Munsif cum Judicial Magistrate, Parangipettai in M.C.No.4 of 2005 filed by the respondents U/s.125 of Cr.P.C.

For Petitioner :Mr.K.V.Sridharan

For Respondents :Mr.G.Pugazhenth

ORDER

This Criminal Revision Petition has been filed U/s.125 of Cr.P.C., against the order dated 28.03.2011 in M.C.No.4 of 2005 filed by the respondents on the file of learned District Munsif cum Judicial Magistrate, Parangipettai.

2. The respondent herein moved the application under 125 of Cr.P.C., seeking the relief of maintenance from the revision petitioner herein. On the ground that initially, the first respondent and the revision petitioner had on promise to marry, they had sexual intercourse subsequently, she became pregnant. When she informed the police, the revision petitioner and his parents have tried for a settlement and also taken steps to abort the pregnancy. However, she insisted for solemnization marriage and as he neglected to pay the maintenance to her, hence, petitioner has been filed under Section 125 of Cr.P.C before the District Munsif cum Judicial Magistrate, Parangipettai.

3. The Revision Petitioner has filed a counter stating denying all allegations and further stated that she is not legally wedded wife and hence, he is not bounded to pay any amount. Before the trial Court, petitioner examined herself as P.W.1 and marked Exhibit P1, DNA test report on her. While, Ex.P2 DNA report for the child-second respondent and DNA report for the revision petitioner herein is marked as Ex.P3. While, the respondent himself is examined as R.W.1.

4. On consideration of both oral and documentary evidence, the trial Court relying upon the Exhibit P2, D.N.A report have come to the conclusion that, the revision petitioner has fathered the second respondent through first respondent and accordingly ordered Rs.2000/- per month per person.

5. Aggrieved against said award of maintenance order dated 28.03.2011 made in M.C.No.4 of 2005 by District Munsif cum Judicial Magistrate, Parangipettai, the respondent has preferred this revision petition.

6. The learned counsel for the revision petitioner relied upon the decision reported in 1988(1) SCC 530 has held that:-

The meaning of 'wife' strictly in terms of Section 125(1)(a) has been defined by the Hon'ble Apex Court in the case titled Yamuna Yamunabai Anantrao Adhaav v. Anantrao Shivaram Adhav and Anr. (1988) 1 SCC 530: (AIR 1988 SC 644) wherein the Hon'ble Apex Court, has held that "Section 25, Cr.P.C has been enacted in the interest of a wife, and one who intends to take benefit of the said Section has to establish the necessary condition, namely, that she is the wife of the person concerned". Vide aforesaid judgment, it has further been held that Hindu woman, who gets married, after coming into force of the Hindu Marriage Act, 1955, in accordance with Hindu rites with Hindu male having a living spouse was not entitled to maintenance under Section 125, Cr.P.C as such marriage is void under Section 11 of the Act.

The Hon'ble Apex Court while interpreting the expression "wife" especially while dealing with the case under Section 125 of the Code has held that the word 'wife' used under Section 125, Cr.P.C of the Code should be interpreted to mean only "legally wedded wife. Careful reading of the Section 125, Cr.P.C, suggests that wife means legally wedded wife because while providing provision under Section 125, Cr.P.C., interest of wife who intends to take benefit under sub-section 125(1)(a), has been specifically protected. Whosoever intends to take

benefit of this provision necessarily needs to establish that she is the wife of the person concerned, meaning thereby, same can be decided only by referring to the law applicable to the parties. As per Hindu customs and law, marriage of woman in accordance with Hindu rites, can be termed as legally wedded wife.

7. On factual matrix of this case is that the marriage between the first defendant and the petitioner herein has not solemnized and hence, she is not entitled for maintenance. As against award of maintenance for the second respondent, the trial Court has relied upon Ex.P2, DNA report and accordingly, awarded the maintenance Rs.2,000/- per mensem. With regard to the capacity to pay the award of maintenance, the revision petitioner has not adduced any evidence before the Court and hence, this Court is of the considered view that the amount of maintenance for 2nd respondent herein awarded by the Court is be enhanced to Rs.3,000/- in respect of second respondent herein alone.

8. In the result, this Criminal Revision Petition is partly-allowed to the extent indicated above and order of the District Munsif cum Judicial Magistrate, Parangipettai stands modified to that extent. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The District Munsif cum Judicial Magistrate,
Parangipettai
2. The Public Prosecutor,
High Court, Madras.
3. The Section Officer,
Criminal Section, High Court, Madras

+1cc to Mr.K.V.Sridharan, Advocate, S.R.No.80865

CRL.RC. No.587 of 2011 and
M.P.No.1 of 2011 and
Crl.M.P.No.2357 of 2017

SR(CO)
CS/07/12/17