

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.837 OF 2009

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. assailing the order dated 17.04.2009 in M.C.No.118 of 2007 on the file of the Judge, Additional Family Court, Visakhapatnam, wherein and whereby the trial Court allowed the petition filed by the petitioners under Section 125 Cr.P.C. and granted maintenance of Rs.3,500/- per month to the first petitioner and Rs.1,500/- per month to the second petitioner.

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the M.C. before the trial Court to avoid confusion.

3. The learned counsel for the respondent (petitioner herein) strenuously submitted that the trial Court having arrived at a conclusion that the first petitioner failed to prove her marriage with the respondent ought not to have granted maintenance to the petitioners. He further submitted that the first petitioner has not taken any steps to call for the service register of the respondent to establish her case. He also submitted that the finding of the trial Court that the respondent did not produce the service register itself is a valid ground to draw an adverse inference is not sustainable either on facts or in law. He further submitted that if the order of the trial Court is allowed to stand, it would amount to miscarriage of justice.

4. *Per contra*, the learned counsel for the petitioners (respondent Nos.1 and 2 herein) submitted that the trial Court rightly considered the material available on record and allowed the

petition. She further submitted that the trial Court rightly placed reliance on Exs.A.1 to A.3 and oral testimony of RWs.1 to 3 and allowed the petition. She also submitted that the trial Court has taken the financial status of both parties and granted maintenance of Rs.3,500/- per month to the first petitioner and Rs.1,500/- per month to the second petitioner.

5. Now the points that arise for consideration are:

1. Whether the trial Court is justified in allowing the petition filed by the petitioners or not? and

2. Whether there is any illegality, irregularity or impropriety in the order of the trial Court, which warrants interference of this Court or not?

6. Point Nos.1 and 2 are interlinked with each other; hence, this Court is inclined to address both points simultaneously in order to avoid recapitulation of facts and evidence.

7. The petitioners filed a petition under Section 125 Cr.P.C. alleging that the first petitioner is the legally wedded wife of the respondent. Out of lawful wedlock, the first petitioner and the respondent were blessed with a son i.e., second petitioner. It is the case of the petitioners that the respondent intentionally and wilfully neglected to provide maintenance to them. The respondent filed counter admitting that he is biological father of the second petitioner and denied the factum of marriage between him and the first petitioner. It is further alleged that the first petitioner is not the legally wedded wife of the respondent; therefore, the petitioners are not entitled to claim maintenance.

8. Before the trial Court, on behalf of the petitioners, PWs.1 to 5 were examined and Exs.A.1 to A.3 were marked. On behalf of the respondent, RWs.1 to 3 were examined but no documents were marked.

9. Basing on the oral and documentary evidence available on record, the trial Court arrived at a conclusion that the respondent intentionally and wilfully neglected to provide maintenance to the petitioners and allowed the petition by granting maintenance to the petitioners.

10. It is the case of the first petitioner that her marriage was performed with the respondent on 17.04.1995 at T.T.D. Kalyana Mandapam. Except the self-served testimony of PW.1, there is no other documentary evidence to establish the factum of marriage between her and the respondent. The respondent in unequivocal terms admitted that he is the father of the second petitioner. It is not in dispute that the first petitioner is the natural mother of the second petitioner. RWs.2 and 3 clearly admitted that the second petitioner is the son of the first petitioner and the respondent. The oral testimony of RWs.2 and 3 clearly reveal that the first petitioner and respondent lived together under the same roof in the same village. The testimony of RWs.1 to 3 reveal that in the panchayat the respondent paid an amount of Rs.1,00,000/- towards full and final settlement of future maintenance of the petitioners. Absolutely there is no material on record to establish that the respondent is having legally wedded wife prior to 17.04.1995.

11. The learned counsel for the respondent strenuously submitted that the finding of the trial Court that non-production of

the service register by the respondent itself is a valid ground to draw an adverse inference is not sustainable. It is a settled principle of law that if a person, who is in the custody of best evidence, fails to produce it, the Court can draw an adverse inference against him. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the respondent that the finding of the trial Court on this aspect is not sustainable.

12. Ex.A.1 is the joint photograph of the first petitioner and respondent. The respondent did not deny or dispute Ex.A.1. A perusal of Ex.A.2 clearly reveals that in the school register the name of the respondent is shown as the natural father of the second petitioner. A perusal of Ex.B.3 also reveals that the second petitioner is the son of first petitioner and respondent. Admittedly the respondent did not choose to file a suit for declaration to declare that the first petitioner is not his legally wedded wife even after filing of the petition under Section 125 Cr.P.C. by the petitioners. On one hand the respondent is admitting that the second petitioner is his son and on the other hand he is denying that the first petitioner is his wife. If a petition is filed under Section 125 Cr.P.C., the Court has to see whether there is any *prima facie* material to establish that the petitioner is wife of the respondent, then the Court can grant maintenance. It is needless to say that if a man and woman lived together for such a longtime as wife and husband to the knowledge of one and all, the Court can draw a presumption that they are wife and husband. The testimony of RWs.2 and 3 clinchingly establishes that the first petitioner and respondent lived together for a longtime. Their testimony further reveals that the second petitioner is the natural

son of the first petitioner and the respondent. The respondent came forward with a stand that he paid an amount of Rs.1,00,000/- to the petitioners towards full and final settlement of future maintenance. This factum was spoken by RWs.2 and 3. In fact the persons, who were examined by the respondent, fully supported the case of the petitioners. Merely because no documentary evidence was produced to prove the marriage that itself is not a valid ground to dismiss the petition filed under Section 125 Cr.P.C. The respondent has taken a specific plea in the counter that he married one Nirmala on 01.05.1986. If really the respondent married Nirmala on 01.05.1986, certainly the same might have been reflected in his service register. If really he married Nirmala, what prevented him to examine the said Nirmala to negate the contention of the petitioners. For the reasons best known, the respondent did not choose to examine the said Nirmala. The Court shall not lose sight of this aspect while appreciating the contention of the petitioners. The material placed before the Court falls short to establish that the respondent married Nirmala on 01.05.1986. The material placed before the Court is *prima facie* sufficient to establish that the first petitioner and respondent lived together for such a long time and were blessed with a son i.e., second petitioner.

13. The case of the petitioners is that the respondent has been working as RPF Constable in Railways and getting salary of Rs.17,000/- per month. This fact was not denied by the respondent. For the reasons best known, the respondent did not choose to produce salary certificate to establish that he is not getting a monthly salary of Rs.17,000/-. In the absence of

documentary evidence, the Court can safely presume that the respondent is drawing monthly salary of Rs.17,000/-. The trial Court also arrived at a conclusion that the respondent is getting a monthly salary of Rs.17,000/-. The finding recorded by the trial Court with regard to salary of the respondent is based on material available on record. While granting maintenance, the Court has to take into consideration the financial status of both parties. The second petitioner, being a son of RPF Constable, can expect a decent life. The trial Court granted maintenance of Rs.3,500/- per month to the first petitioner and Rs.1,500/- per month to the second petitioner. By the time of filing of the petition, the second petitioner was aged about 10 years. An amount of Rs.5,000/- per month is hardly sufficient for maintenance of petitioners leave apart educational expenses of the second petitioner.

14. Taking into consideration the nature of employment of the respondent as well as socio-economic conditions of both parties, I am of the considered view that granting maintenance of Rs.3,500/- per month to the first petitioner and Rs.1,500/- per month to the second petitioner is not on higher side. There is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court while exercising the revisional jurisdiction under Section 397 Cr.P.C.

15. Accordingly, the Criminal Revision Case is dismissed. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

T.SUNIL CHOWDARY, J

Date: 17.08.2017
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