

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.1620 of 2016

ORDER :

The revision petitioner/respondent is the husband of first respondent and father of 2nd respondent. The respondents filed M.C.No.02 of 2012 against petitioner under Section 125 of Cr.P.C., claiming maintenance. M.C.No.02 of 2012 was ended in dismissal on 04.05.2016 holding the respondents as not wife and son of the petitioner. Impugning the same, the respondents filed Revision Petition No.32 of 2015 on the file of VI Additional District and Sessions Judge, Sompeta, which was allowed on 11.04.2016 holding 2nd respondent is not his son, but first respondent as wife of the petitioner and awarded Rs.1000/- per month as maintenance from the date of filing of maintenance case. Aggrieved by the same, this Revision is filed by the petitioner. The parties are being referred as arrayed before the maintenance case for sake of convenience.

2. Coming to the factual background of the case, seven years prior to the date of filing of the maintenance case, the marriage of MC 1st petitioner with MC respondent was stated to have been performed and in their wedlock, they blessed with the MC 2nd petitioner and aged 6 years by the date of filing of maintenance case. After birth of the male child, the MC respondent started harassing her and neglected them and disputes arisen there from. At elders intervention they lived amicably for some time later and thereafter he reverted his old conduct resulting elders intervention again on 09.03.2011, where he agreed to pay maintenance at

Rs.600/- per month to them and having paid them for one month, failed to pay and for her notice demanding to pay, he gave false reply, even though he is working as Sweeper in local Gram panchayat and earning Rs.4500/- per month with sufficient means.

3. Those allegations were disputed in the counter filed by the M.C respondent contending that she is like a sister by courtesy to him and never lived as wife of him and the so called son is not born to him and there is no any legal relationship between them and the alleged elderly dispute and promise to pay any amount or paid for one month are all false; that he married one Seetha 15 years ago and blessed with three children out of their wedlock and he is leading happy marital life with his wife Seetha and the claim is liable to be dismissed.

4. It is pursuant to it, on enquiry from evidence of the MC 1st petitioner as PW.1 and three other persons including the so called elders to the dispute settlement document Ex.P.3 among Exs.P.1 to P.5 as PWs.3 and 4 besides PW.2 is the mother of PW.1 and from the evidence of MC respondent as RW.1 besides his alleged wife Seetha RW.2 and two more witnesses RWs.3 and 4 and by placing reliance on EXs.R.1 to R.6, the learned Magistrate also referred to EXs.C.1 to C.3 marked through the head master of the School as CW.1, it was observed that though MC petitioners relied upon EX.P.3, in the evidence of PWs.3 and 4 in relation to it, if at all it is in existence, there is no whisper in the maintenance petition of such a document executed and in existence. There is basis in the contention of MC respondent that it is created as an after thought and hence, it cannot be looked into. EX.A.4-Aadhar card of the

child shows his father's name as Bairagi which cannot by itself be the basis, so also the EX.P.5-School certificate of 2010-2012 showing the father's name of the child as Bairagi. As EX.R.5-school certificate of the child shows his name as Sathavamsa Anil Kumar S/o.Late Dasaradhi and it is substantiated by evidence of CW.1, with reference to EX.C.1 application for admission in the year, 2005 that shows the child joined in the school in the year 2005 and completed first and second standards in the academic year 2005-2006 and 2006-2007, but not as shown in Ex.P.5 of 2010-2012. It is also a created a document. In Ex.C.3-Admission register, there is correction in the father's name which is interpolated as Bairagi subsequently and that the Aadhar card was also obtained recently. It will not be given credence and will not override the Ex.C.1 admission form of the 2005 of the child. Thereby he is not the son born to the respondent (Rw.1) to grant any maintenance against him. Further Rw.2 wife of Rw.1, who also in support of evidence of Rw.1, deposed of performance of their marriage about 25 years back and in subsistence and they got three children out of their wedlock and the first respondent is the wife of one Dasaradhi and got two children through him by names Satavamsha Roja and Anil and Roja's marriage was performed. Rw.3 is the son of Rws.1 and 2 who is a student of B.Sc Computers, aged 22 years. Ex.R.2-Ration card pertains to the Rw.1's family members. Ex.R.3 ration card pertains to Pw.2 (mother of Pw.1). Thereby once the first marriage is subsisting, any marriage even alleged is void under law, however, the burden lies on the husband to prove, provided there is some evidence and the first respondent failed to establish the relationship of wife and

husband and 2nd respondent as their son in dismissing the maintenance claim vide order dated 04.05.2015.

5. Impugning the maintenance case, the wife filed Crl.R.P.No.32 of 2015 on the file of Learned Additional District and Sessions Judge, Sompeta. The Revision was allowed on 11.04.2016 granting maintenance to the MC 1st petitioner (Pw.1) holding her as wife by refusing to the MC 2nd petitioner as not son. For that the lower revision Court observed that the evidence of Pws.3 and 4 who are witnesses to Ex.P.3 deposed about their presence at the time of marriage of MC respondent with MC 1st petitioner and about panchayat and that Rw.1 executed Ex.P.3 agreeing to pay maintenance and he paid the same for some time and later failed to pay. They denied the suggestion of signature of Rw.1 was obtained on Ex.P.3 by force. Ex.P.3 refers that the marriage was performed seven years back and they blessed with a son-2nd petitioner and he agreed to pay maintenance. It also refers to his earlier payment and enhancement therefrom and same is supported by Ex.P.4-Aadhar card, Ex.P.5-study certificate and Ex.C.3 register shows name of Pw.2 Anil as son of Bairagi and mother's name as Pw.1. It shows his name was removed from continuation on rolls for long absence and there is overwriting of birth as well as admission in Ex.C.3. In Ex.C.3 the father's name and sur name is corrected with whitener without any counter signatures and once Ex.P.3 resolution of elders proved from the evidence, there is relationship of husband and wife. So far as 2nd petitioner (Child), it is disputed. For paternity, DNA test was sought for by filing petition which was ended in dismissal. The lower revision court however placed reliance on the expression of

the Apex Court in ***Badshah Vs Sou.Urmilla Badshah Godse and another***¹ of suppressing the fact of existence of earlier marriage that husband married another woman, he is bound to pay maintenance as claimed by treating her as legally wedded wife, for he has no right later to deny the relationship for maintenance claim. It is impugning the same present revision is filed.

6. The contentions in the grounds of Revision and the oral submissions during hearing in support of the counter contentions in the maintenance case vis-à-vis, the finding of the learned Magistrate in saying lower revision Court went wrong in awarding maintenance to the MC 1st petitioner (Pw.1) as if she is his wife having held that MC 2nd petitioner is not his son and thereby the order of the Magistrate be restored by setting aside the order of lower revision Court.

7. Whereas, it is the submission of the learned counsel for the MC petitioners that the order of the lower revision Court holds good and second revision is not maintainable and otherwise on merits it is liable to be dismissed.

8. Heard. Perused the material on record.

9. The Apex Court in ***Dharmilal Tobacco Products Limited Vs State of Maharashtra***², observed that even the second revision is not maintainable as per Section 397 Cr.P.C, the inherent power of High Court under Section 482 Cr.P.C., is available to decide the same not as second revision but as application under Section 482 Cr.P.C. Here that difficulty also does not arise for the reason that

¹ 2014 (2) SCJ 779

² AIR 2009 SC 1032

the Revision maintained in the lower Court was by MC petitioners, whereas present revision is filed by the MC respondent and there is no another revision maintained by the MC petitioners. The wording that Section 397 (3) Cr.P.C., for a bar of second revision is if by the same person or persons and not by any opposite party to the 1st revision.

10. Now coming to the merits, no doubt it is fairly the settled law that the proceedings under Section 125 Cr.P.C., are summary in nature and even quasi civil, the proof like even in a civil dispute is not required for establishing the marriage to claim maintenance as wife for the reason even long living together entitles to claim maintenance, but for to say, the same will not prejudice the rights of the contesting respondents as not husband in any other efficacious civil dispute.

11. From this, now coming to the correctness of the impugned reversal order of the lower Revision Court against the dismissal of the maintenance claim by the Magistrate, infact to rely on the proposition of the Apex Court in Badshah supra, what is laid down is if there is a suppression of the fact by the male person of existence of his marriage with another woman whom he already married, in marrying another female, she is to be treated for all purposes to the claim of maintenance under Section 125 Cr.P.C., as his wife even such marriage otherwise is void. Here there is no pleading in the maintenance case to that affect, much less evidence of the MC petitioners particularly of PW.1 to say Rw.1 suppressed the factum of he got wife (Seetha-Rw.1) and children including Rw.3 and without informing that fact married again the MC 1st petitioner. The Ex.P.3 not even refers the same. Paternity of

MC 2nd petitioner is also important in this regard. For that as held by the Apex Court in **Vasudev Badwek Vs Nandalal Badwek**³ that DNA examination is a necessary device being an exact science in proof of the factum. Here there was an application for DNA examination to prove paternity of the MC 2nd petitioner. The expression of the Apex Court in Badshah supra, for the lower Revision Court to award maintenance to MC 1st petitioner also strictly has no application. There remains the factum of the Rw.1 (MC respondent) already got wife (Rw.2) and children (including Rw.3) and the evidence on record establishes the same. As discussed by the learned Magistrate among Exs.C.1 to C.3, C.1-admission register shows the father's name in the year of admission of MC 2nd petitioner in 2005 is different. It shows MC 1st petitioner is wife of some other person. There was interpolation and striking of original sur name and father's name by adding the name of the MC respondent and later obtained Ex.P.5. For reversing the order of Magistrate by the lower Revision Court there from, there is no basis. Furthermore, the only thing to be considered is if at all there is any performance of marriage between MC 1st petitioner and MC respondent. As referred in Ex.P.3 where the signature of the MC respondent is not in dispute including from the suggestions referred supra to Pws.3 and 4, but for to say his signatures were obtained by force. The said suggestion is not even with a plea in reply notice or counter and thus is with no basis. Even in his evidence, there is nothing as to when the signatures were obtained by force and what action he has taken, if true. It all from the circumstances and the facts with reference to

³ 2014 (2) SCC 576

Ex.P.3 establishes that he lived with the 1st respondent as wife, suppressing if any of the factum of his earlier marriage with Rw.2. However, as what is referred supra, it is not even such a plea or evidence of MC 1st petitioner (Pw.1) of without knowing that he (Rw.1) is a married person with Rw.2 and got children, she married him that is what further to be established as per **Badshah's** case supra. Because had she been knowingly lived with him of subsistence of earlier marriage, she cannot have the benefit from the expression. These aspects are silent in the pleadings of both and also in the evidence of both to say there is no basis to such a conclusion arrived by the lower revision Court. However, the fact remains from Ex.P.3 document not in dispute of the signature of him and for the contents follow that establishes the so called marriage seven years prior to filing of maintenance case. That is also deposed by Pws.1 to 4 in one voice. The only thing now to consider is the crucial aspect of whether MC 1st petitioner married the MC respondent without knowing that fact of he got wife and children with subsisting marriage and further pretended contra and by believing all his words of not married, she married and lived with him as wife to the entitlement of maintenance. So far as the MC 2nd petitioner once DNA examination asked by them to decide paternity had it been, if at all in positive to prove, once there is a process of marriage, even it is void, as per Section 16 of the Hindu Marriage Act, the child born in such wedlock (Void marriage) is for all purposes legitimate to claim maintenance and also in future to claim as one of his legal heirs that is also crucial. Thus the DNA examination is also crucial in the case on hand.

12. Accordingly and in the result, the impugned order of the lower revision Court is set aside and the matter is remitted to the learned Magistrate (trial Court) to decide afresh by permitting DNA examination to be undergone for deciding the paternity of MC 2nd petitioner on fresh application of any of the parties and also to permit further oral evidence in relation thereto and as to the process of marriage between MC 1st petitioner and respondent performed if any and by any mis-representation by Rw.1 to Pw.1 and if so in believing him and without knowing that he already married and got children she married and if so to apply the principle laid down in the Apex Courts' expression in Badshah supra and to give fresh disposal. In the meantime the amount of Rs.1000/- awarded by the lower revision Court for all purposes to be treated as interim maintenance to continue to pay until final disposal of maintenance case pursuant to this order for fresh disposal as directed supra.

Consequently, miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

Dr. B.SIVA SANKARA RAO J,

31.01.2017.
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