

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 11.09.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.464 of 2017
and
Crl.M.P.No.4147 of 2017

K.Mohan

... Petitioner

Vs.

1.Bakialakshmi

2.Nithiya (Minor)

3.Gowtham (Minor)

(Represented by 1st respondent,
mother and Natural Guardian)

... Respondents

PRAYER: Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., to set aside the Order in M.C.No.18 of 2014 dated 29.11.2016 on the file of the Family Court, Udhagamandalam.

For Petitioner : Mr.Parthiban
for Mr.S.Shankar

For Respondents : Mr.T.Shanmugam

सत्यमेव जयते
O R D E R

The above said revision filed by the petitioner against the order of maintenance granted by the learned Family Court, Udhagamandalam in M.C.No.18 of 2014 by order dated 29.11.2016. The said trial Court granted monthly maintenance of Rs.10,000/- to the respondents from the date of filing of the petition.

2.The case of the respondent is that the 1st respondent is the mother of the respondents 2 and 3. The 1st respondent submits that she married the revision petitioner on 27.10.1999 at Tirupathi. Later they lived together at Thittukal, Udhagamandalam, the 2nd respondent Nithya was born on 20.01.2001 and the 3rd respondent Goutham was born on 08.12.2006. According

to the 1st respondent the revision petitioner married her by suppressing his earlier marriage with one Padma. The revision petitioner used to see his first wife and his daughter at Bangalore. There was a quarrel arose between the 1st respondent and the revision petitioner with respect of his relationship with the first wife. The 1st respondent submits that in the year June 2013, the revision petitioner refused to provide necessary family needs to the respondents. Later the 1st respondent approached the parents of the revision petitioner for her family need on 18.07.2013. But the parents of the revision petitioner driven her from the house and threatened. When she approached revision petitioner in the month of June 2013, the same type of treatment meted out to her. Thereafter, the petitioner permanently separated from her. The 1st respondent filed application for maintenance under Section 125 of Cr.P.C. stating that she has no income of her own and living with the aged parents. According to her the revision petitioner owns lands, houses and cattles and earning Rs.1,00,000/- per month.

3.The case of the revision petitioner was that he disputed the marriage with the 1st respondent and according to him he was not the father of the respondents 2 and 3. According to him at no point of time the revision petitioner and the 1st respondent lived as husband and wife and the said maintenance petition filed by the 1st respondent is just to grab the property of the revision petitioner. Moreover the revision petitioner married one Padma, daughter of Mahalingam on 17.04.1981 and a female child was born to them. The revision petitioner further submits that the 1st respondent was working as a coolie in his agricultural land at Tittukal, Udhagamandalam and she made a false propaganda that there was a marriage between them and the said two child was born to them. The revision petitioner prayed to dismiss the maintenance petition filed by the respondent.

4.The trial Judge considered the evidence of the 1st respondent and the revision petitioner and perused 7 documents marked by the 1st respondent and considered legal notice dated 14.07.2003 marked by the revision petitioner and come to the conclusion that the revision petitioner has to pay Rs.10,000/- as monthly maintenance to the respondent on or before the 10th day of every month and the said maintenance amount shall be paid from the date of filing of the maintenance petition.

5.I heard Mr.Parthiban for Mr.S.Shankar, learned counsel for the petitioner and Mr.T.Shanmugam, learned counsel for the respondents and perused the entire materials available on record.

6.The scope of Section 125 of Cr.P.C. is to provide summary remedy to save dependants from blestitution and vagrancy and this is to serve a social purpose, apart from and independent of the obligation of the parties under their personal law. Moreover

the mere allegation that the revision petitioner is her husband will not be sufficient when the factum of marriage has been categorically denied by the revision petitioner. The burden to prove the marriage lay on the 1st respondent by adducing the evidence and producing documents. Now to appreciate the evidence of the 1st respondent, she accepted that she was worked as a coolie and they loved each other for one year and they married at Tirupati before 2 and 3 common friends. She was not able to identify the said common friends or examine any person who were witnesses of the marriage. Moreover she stated in her evidence that the marriage was photographed but she failed to produce marriage photos. According to her, after the marriage they resided one year at No.26, Achanakkal at Ketty but she failed to prove the said statement by marking any document, even though she admit that she has sufficient documents to prove the said contention. Moreover she admitted that during her matrimonial life with the revision petitioner, she never visited any function with him.

7.The 1st respondent in her evidence submitted that the revision petitioner admitted the children in school by signing the document, but she has not chosen to mark the said document as evidence before the Court. Even though the documents are in her possession. The proceedings under Section 125 of Cr.P.C. is a summary one and to give immediate relief to the persons neglected for maintenance. The objective of Section 125 of Cr.P.C. is not to decide right or relationship of the person or give any finding about the solemnization of marriage. Even though no strict proof or evidence are necessary to prove the marriage between the parties under Section 125 of Cr.P.C. But the person who pleaded the solemnization of marriage with other person has to place any material or evidence to satisfy the Court that there was a marriage between them.

8.In the instant case, even though the 1st respondent has admitted that she has marriage photos, residential proofs and certificate signed by the revision petitioner while admitting the children in school are not placed before the Court to prove the factum of marriage. Moreover, no person examined by the 1st respondent to prove the marriage even though she admit that common friends present at the time of marriage. The revision petitioner sent a reply notice on 14.07.2003 denying the marriage and the first child was not born to him, the 1st respondent accepted the receipt of the said notice and it is evident that the said reply notice was sent even before the birth of the second child.

9.It is clear that the 1st respondent has failed to establish her marriage with the revision petitioner and this Court concludes that once the marriage is not proved by the wife, she has no legal obligation to receive the maintenance

from the revision petitioner under Section 125 of Cr.P.C. But the right of the child legitimate or illegitimate under the Court is an individual right of the child in his or on her own right, independent of mother. When a women claims maintenance, on behalf of minor child out of wedlock against the alleged father, the onus is on her to show that the child could only have been born through the alleged father. The 1st respondent may utilize her legal right to establish the status of her child by initiating appropriate proceeding before the proper forum.

10.In the result, the revision petition filed by the revision petitioner is allowed and the order passed by the learned Family Court, Udhagamandalam in M.C.No.18 of 2014 dated 29.11.2016 is set aside. Consequently connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vs

To

The Family Court, Udhagamandalam.

+1cc to Mr.S.Shankar, Advocate SR.No.62786.

Cr1.R.C.No.464 of 2017

and

Cr1.M.P.No.4147 of 2017

rrs 25/09/2018

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