



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
Crl.R.C(MD)No.374 of 2018

WEB COPY

1.Saroja
2.Shanmuganathan : Petitioners/Respondents/ Petitioners

Vs.

Arumugam : Respondent/Petitioner/ Respondent

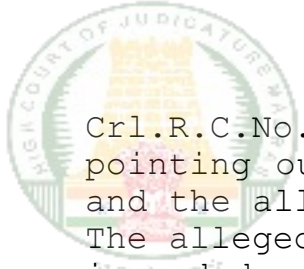
PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records of the learned Additional Sessions Judge, Karur in Crl.R.C.No.32 of 2017 by judgment dated 31.01.2018, reversing the order of maintenance passed by the learned Judicial Magistrate I, Kulithalai in M.C.No.7 of 2008 by the Judgment dated 03.04.2017 and set aside the order of learned Additional Sessions Judge, Karur in Crl.R.C.No.32 of 2017 dated 31.01.2018.

For Petitioners : Mr.S.Deenadhayalan
For Respondent : Mr.E.K.Kumaresan

ORDER

Challenging the order of the Appellate Court in Crl.R.C.No.32 of 2017 dated 31.01.2018, reversing the order passed by the trial Court leading to the dismissal of M.C.No.7 of 2008, on the file of the Judicial Magistrate I, Kulithalai, this revision is filed.

2.According to the first petitioner, she married the respondent herein namely, Arumugam. Due to wed lock, the second petitioner born to them in the year 1994. Later, the respondent deserted the first petitioner and lived with another lady by name Vijaya. In the presence of elders, a panchayath took place on 24.03.1990, wherein the respondent herein agreed to give half of his share in his agricultural land and cattle in favour of the first petitioner. Despite such promise, he has not settled half of the share. Notice through Advocate between first petitioner and the respondent took place during the month of October 1994. Since the respondent has not joined the petitioner and also failed to take care of the minor son, she has preferred an application under Section 125 of the Code of Criminal Procedure seeking maintenance for herself and her son, namely the second petitioner. The trial Court has awarded a sum of Rs.1,500/- per month for the first petitioner and a sum of Rs.1,000/- per month for the second petitioner. Aggrieved by that, the respondent/husband has preferred Criminal Revision Case in



Crl.R.C.No.32 of 2017 before the Additional Sessions Court, Karur, pointing out that the first petitioner never married the respondent and the alleged muchalika of the year 1990 is a fabricated document. The alleged notice issued by the first petitioner and a reply notice issued by the respondent are all fabricated for the purpose of filing the maintenance petition. The Appellate Court has found in favour of the revision petitioner/the respondent herein/husband and allowed the revision petition. Aggrieved by that, the present Criminal Revision Case is filed.

3. Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondent.

4. The falsity of the revision petition is falsifiable, which is found from the records relied on by the revision petitioners. In the Muchalika dated 24.03.1990, it is specifically alleged that the respondent herein has deserted the first petitioner and pursuant to the compromise in the presence of panchayathars, he has agreed to give equally share of his properties to the first petitioner. To prove the said Muchalika, no independent witness has been examined on behalf of the first petitioner.

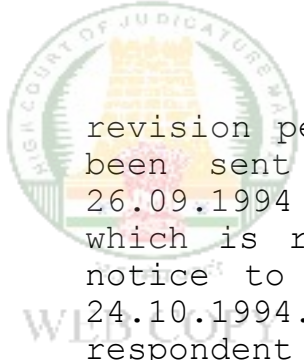
5. Coming to the exchange of notice through her lawyer, a Legal notice has been issued by the learned counsel on behalf of the respondent, dated 24.10.1994, wherein it is alleged that the marriage took place six years prior to the notice. Both were lived together happily for one year. But, thereafter, the respondent harassed the first petitioner and driven out from the marital home before five years and he is having illicit intimacy with one Vijaya.

6. It was also contended in the notice that the son by name, Shanmuganathan was born to them 6 months prior to the date of notice. The said notices are reference to the agreement dated 26.09.1994, wherein it is stated that the respondent has agreed to give half of the share to the first petitioner. There is no acknowledgment for the service of the said notices. Similarly, the other document, which is alleged to have been the notice sent by advocate on behalf of the respondent dated 20.10.1994, undertakes that the respondent herein has admitted the marriage, birth of child and alleging that the first petitioner has deserted him through his counsel to come and join within ten days or he will resort to legal course, as similar conclusion is also found in the alleged notice sent by the first petitioner through her counsel.

7. Relying upon these two documents and the Muchulika dated 24.03.1990, the learned counsel on behalf of the revision petitioners would submit that the marriage between the respondent and the first petitioner is admitted. Therefore, the order of the trial Court is perverse. This Court finds that the above submission is unsustainable.

<https://hcservices.ecourts.gov.in/hcservices/>

8. In the light of the fact that the Muchulika relied by the



revision petitioners is not referred in the notice alleged to have been sent by her on 24.10.1994. Some other agreement dated 26.09.1994 referred the alleged reply notice of the respondent, which is relied on by the revision petitioner, cannot be a reply notice to the legal notice sent by the first petitioner, dated 24.10.1994. The notice sent by the counsel on behalf of the respondent dated 20.10.1994 was emanated from the respective parties and received by other parties. Further, the school certificate of the second petitioner indicates that his date of birth as 05.06.1994 and also the name of his father is shown as 'Ponnusamy' and name of the mother shown as Saroja. When the first petitioner herself by relying upon Muchulika dated 24.03.1990, admitted that she had not been deserted by the respondent long back and he has agreed to pay share of his property. The birth of second petitioner through the respondent is unimaginable and coupled with the school records, which shows the name of the father of the second respondent as 'Ponnusamy'. Hence, this Court finds no perversity or illegality in the order passed by the first Appellate Court. Accordingly, this petition is dismissed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1.The Additional Sessions Judge,
Karur

2.The Judicial Magistrate I,
Kulithalai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

- 1 CC TO Mr.E.K.Kumaresan, ADVOCATE IN SR No. 82093.
- 1 CC TO Mr.S.Deenadhayalan , ADVOCATE IN SR No. 81802.

RMK

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