



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.01.2018

[Orders Reserved on 23.03.2017]

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CORAM:
THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.349 of 2016
and
CRL M.P(MD)No.4413 of 2016

Jayakumari : Petitioner / Petitioner

Vs.

Stephen : Respondent / Respondent

PRAYER: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the order made in M.C.No.27 of 2013 on the file of the Family Court, Madurai, dated 07.04.2016 and allow the Revision Petition.

For Petitioner : Mr.R.Karunanithi

For Respondent : Mr.R.Aravindraj

ORDER

This Criminal Revision Petition has been filed praying to set aside the order made in M.C.No.27 of 2013 on the file of the Family Court, Madurai, dated 07.04.2016.

2. The petitioner claims that she is the wife of respondent. The petitioner and the respondent married each other on 06.01.2005 and thereafter, they lived jointly, as wife and husband respectively at the respondent's house and there was no issue to them in view of their marriage. The respondent was addicted to alcohol and always tortured the petitioner. The respondent pledged the jewels of the petitioner to go abroad for job and he has no permanent job and he came back to India. While the respondent left for abroad, the petitioner was driven out from the matrimonial house by the parents of the respondent. Thereafter, the respondent refused to take back the petitioner and he failed to maintain her with love and care. The petitioner has no source of income to maintain her. The respondent is earning <https://hcmv.clerks.courts.gov.in/services/> of Rs.1,50,000/- from his job at abroad. Hence, the petitioner has filed an application under Section 125 of Cr.P.C., on 23.03.2013 before the Family Court, Madurai, seeking



monthly maintenance of Rs.20,000/- from the respondent.

3. The respondent claims that he belongs to Christian Religion and the petitioner belongs to Hindu Religion. The family members of the petitioner, without bothering the Religions and castes of the parties, conducted the marriage between the petitioner and the respondent on 06.01.2005 in their house and marriage reception was also held on 08.01.2005 in 'Muthu Vijay Marriage Hall' at Madurai and first night was also held in the house of the respondent at Madurai and they were living together, as husband and wife, and thereafter, problem arose between the petitioner and respondent on 05.11.2010 and the petitioner herself left the matrimonial home on her own volition and thereafter, she refused to come to live with the respondent and she preferred a complaint against the respondent and his parents and a criminal case in C.C.No.202 of 2014 is pending on the file of the Additional Mahila Court and also filed M.C.No.85 of 2014 under the Domestic Violence Act and the same is also pending.

4. The respondent further states that the respondent filed a Suit in O.S.No.19 of 2011 against the petitioner praying to declare the marriage solemnized on 06.01.2005 between the petitioner and respondent as null and void and also prayed for dissolution of the marriage, since the marriage was not registered under the Special Marriage Act and there is no marital relationship between them and hence, the petitioner is not entitled to claim maintenance amount.

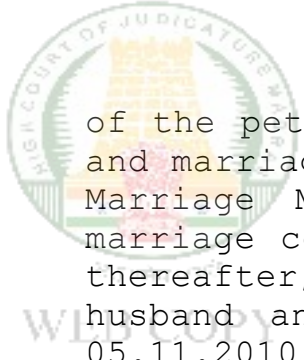
5. The learned Judge of the Family Court at Madurai dismissed the petition after hearing both the parties on 07.04.2006 on the ground that the spouses belonged to different Religions, their marriage should be registered under the Special Marriage Act and if there is no such registration then there is no marriage at all. The Suit in O.S.No.19 of 2011 is also decreed in favour of the respondent and declared that the marriage solemnized between the petitioner and the respondent on 06.01.2005 is null and void and hence, the petitioner has no right to claim maintenance. There is no marital relationship between the spouses and dismissed the claim of maintenance from the respondent by the petitioner herein.

6. Aggrieved by the order of dismissal, the petitioner / wife has filed this Criminal Revision before this Court, seeking the relief to set aside the order made in M.C.No.27 of 2013 on the file of the Family Court, Madurai, dated 07.04.2016.

7. Perused the materials on record. Heard and considered the rival submissions made by either side.

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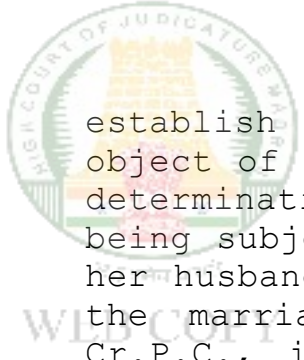
8. It is an admitted fact that the marriage between the petitioner and the respondent was held on 06.01.2005 in the house



of the petitioner in the presence of family members of both sides and marriage reception was also held on 08.01.2005 in 'Muthu Vijay Marriage Mahal' at Madurai and also first night between the marriage couples was also held in the house of the respondent and thereafter, the respondent and the petitioner were living as husband and wife jointly in the house of the respondent till 05.11.2010. The petitioner contends that she was driven out from the matrimonial home by the parents of the respondent, while the respondent was in abroad for job. The respondent contends that the petitioner herself, on her own volition, left the matrimonial house. However, they are not living together from 05.11.2010 as husband and wife. The petitioner contends that the marriage between the petitioner and the respondent was solemnized as per the Christian Rites. The respondent contends that the petitioner belongs to Hindu Religion and Nadar Caste and the respondent belongs to Christian Religion and Mudaliyar Caste, but the petitioner deposed in this case that she belongs to Christian Nadar community and denied that she does not belonged to Hindu Religion, as contended by the respondent in this case. Admittedly the marriage was not held at Church, but in the house of the petitioner. There is no evidence to show that the marriage was solemnized as per the Christina rites, as contended by the petitioner herein. It is suggested in the evidence of the petitioner by the respondent in cross-examination of the petitioner that the petitioner has stated in her counter filed in O.S.No.19 of 2011 that she belonged to Hindu Community, but the petitioner denied the said suggestion. No document is filed in this case to show that the petitioner has admitted in her counter statement in the Suit of the respondent that she is Hindu.

9. Admittedly, the trial of the case and the trial of the Suit in O.S.No.19 of 2011 were not tried jointly, but simultaneously, as found in the impugned order. The petitioner has not admitted in this case that the petitioner belongs to Hindu Religion as stated in the impugned order. However it is admitted that the respondent and the petitioner were living jointly as husband and wife in the house of the respondent from the date of marriage ie., more than five years, but they have no issues. The counsel for the revision petitioner relies the decisions of the Hon'ble Apex Court reported in 1999 (7) SCC 675 (Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit and Another); 2011 (1) SCC 141 (Chanmuniya Vs. Virendra Kumar Singh Kushwaha and Another) and 2012 (1) SCC (Crl.) 371 (Pyla Mutyalamma Alias Satyavathi Vs. Pyla Suri Demudu and another) contending that the validity of a marriage cannot be a ground for refusal of maintenance, if other requirements of Section 125 of Cr.P.C., are fulfilled.

10. Section 125 Cr.P.C., proceeds on the basis of defacto marriage de jure. The nature of proof of marriage required for a proceeding under Section 125 of Cr.P.C., need not be so strong or conclusive as in a criminal proceedings to



establish the offence under Section 494 of Cr.P.C., since the object of Section 125 of Cr.P.C., is to afford a swift remedy and determination by the Magistrate as to the status of the parties being subjected to a final determination of the civil Court, when her husband denies that the application is not his wife, all that the marriage has to find in a proceeding under Section 125 Cr.P.C., is whether the evidence raises a presumption that the applicant was the wife of the respondent that would be sufficient for the Magistrate to pass an order granting maintenance.

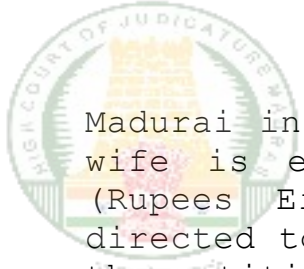
11. In this case on hand, the marriage is admitted. Both are living as husband and wife from the date of marriage ie., on 06.01.2005 till 05.11.2010 from which onwards both are living separately. There is no proof to show that the petitioner is having sufficient means to maintain herself and to meet the expenses for day-to-day needs. The petitioner has pleaded that the respondent is earning monthly salary of Rs.1,50,000/- in abroad, but no proof is filed by the petitioner to prove the said salary income or properties owned by the respondent herein.

12. The claim of monthly maintenance by the petitioner has been denied by the trial Court only on the ground that the marriage between the petitioner and the respondent was not registered under the Special Marriage Act. Such a conclusion of the trial Court in rejecting the claim of maintenance is not legally correct. Non registration of the marriage does not become a bar for claiming maintenance under Section 125 of Cr.P.C., However, it is admitted that the marriage solemnized between the petitioner and the respondent on 06.01.2005 was declared as null and void, as per the Judgment, dated 07.04.2016 of the civil Court / Family Court, Madurai in O.S.No.19 of 2011. The petitioner is not entitled to claim any maintenance from the respondent after such declaratory decree was passed on 07.04.2016, as wife of the respondent. In otherwards, the petitioner is entitled to claim and receive the monthly maintenance from the date of filing M.C.No.27 of 2013 ie., on 22.03.2013 till the date of passing the declaratory relief in respect of status of both the parties ie., on 07.04.2016.

13. Considering the status of the petitioner as wife of the respondent till the date of passing of the declaratory decree on 07.04.2016 and the conduct of the respondent, who failed to maintain his wife and also considering the day-to-day needs of the petitioner to lead decent life and present cost of living towards food, medical expenses etc., the petitioner is entitled to get a sum of Rs.8000/- per month from the date of application till 07.04.2016, ie., the date of decree passed in O.S.No.19 of 2011.

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14. In the result, this Criminal Revision is allowed by setting aside the impugned order passed by the Family Court,



Madurai in M.C.No.27 of 2013, dated 07.04.2016. The petitioner / wife is entitled to get the monthly maintenance of Rs.8000/- (Rupees Eight Thousand Only). The respondent / husband is directed to pay the monthly maintenance of Rs.8,000/- per month to the petitioner / wife, from the date of filing M.C.No.27 of 2013 ie., on 22.03.2013 to till 07.04.2016 and hence, the respondent is directed to deposit the arrears of such maintenance amount from 22.03.2013 to 07.04.2016 at the rate of Rs.8000/- per month towards maintenance of the petitioner to the credit of M.C.No.27 of 2013 on the file of the Family Court, Madurai, within a period of three months from the date of receipt of a copy this order. On such deposit of arrears of maintenance, the petitioner is permitted to withdraw the said amount on proper application before the said Court. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

1.The Judge
Family Court,
Madurai.

2. The Record Keeper,
Criminal Section
Madurai Bench of Madras High Court.

+1cc to Mr.R.ARAVINDRAJ,Advocate,SR. 42889

+1cc to Mr.R.KARUNANITHI,Advocate,SR. 42720

Cr1.RC(MD)No.349 of 2016
18.01.2018

mpk

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