

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.02.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.R.C.NO.192 OF 2012

1.Thangam alias Selvamani alias Selvi
2.Minor Parameshwari
Minor rep.by her mother and natural
guardian 1st petitioner Thangam alias
Selvamani alias Selvi .. Petitioners

/versus/

Mani alias P.Murugan .. Respondent

Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C., to set aside the order dated 13.09.2011 made in C.R.P.No.16 of 2011 on the file of the Additional Sessions Court/Fast Track Court No.II, Gobichettipalayam modifying the order dated 21.03.2011 made in C.M.P.No.4517 of 2010 in M.C.No.3 of 1996 on the file of the learned Judicial Magistrate No.2, Gobichettipalayam and to enhance the maintenance amount.

For Petitioners :Mr.V.Anandhamoorthy

For Respondent :Mr.S.Ramesh Kumar

O R D E R

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

2. This revision petition arising out of the order passed by the Court below in the matter of maintenance sought by the petitioners/wife and the daughter against one Mani/respondent, who is the husband of the first petitioner and father of the second petitioner.

3. The brief facts of the case is that the first petitioner was married to the respondent on 24.11.1993 as per the Hindu Customs and Rights. After few months of marriage, the respondent has developed illicit intimacy with another lady by name Baby and started torturing the first petitioner. In spite of

several grounds of Mediation by the elders, the respondent did not change his behaviour. Meanwhile, the first petitioner got conceived and delivered the second petitioner. The respondent permanently deserted them and started leading extra marital life with the said Baby neglecting the welfare of the petitioners. Having sufficient income through agricultural land, failure to maintain them has given cause of action seeking maintenance of Rs.1,000/- each per month for them.

4. The learned Judicial Magistrate, Gopichettipalayam after considering the merits of the case, has awarded Rs.300/- as maintenance per month to the first petitioner/wife and Rs.200/- per month for the second petitioner/daughter. The ordered maintenance amount was payable from 12.04.1996. In the light of escalation price and cost of living, the application to enhance the maintenance amount has been filed by the petitioners as per Section 127 Cr.P.C and the same was taken on file by the Judicial Magistrate in Crl.M.P.No.4517 of 2010. In the said application, the petitioners have sought Rs.5,000/- each as monthly maintenance.

5. The respondent has contested the application on several grounds including denying his wilful desertion as well as the alleged income from the agricultural land. He had also pleaded that the second petitioner is married to one Kumar and she is leading separate marital life with her husband. Therefore, she is not entitled for any maintenance from the father.

6. The learned Judicial Magistrate has held that the alleged marriage of the second petitioner with Kumar has not been proved by the respondent and the other defence taken by the respondent was not found to be correct. Therefore, enhanced the maintenance to Rs.1,000/-per month to each of the petitioners.

7. Aggrieved by that, the respondent has preferred the revision petition before the Additional Sessions Judge, Gopichettipalayam, FTC II in Crl.R.C.No.16 of 2011. The first appellate Court, on re-appreciation of the evidence, has held that the Magistrate has awarded maintenance of Rs.300/- to the first petitioner and Rs.200/- to the second petitioner as early as 1999 and after efflux of time, taking into consideration the inflation of cost of living, a sum of Rs.1,000/- per month as maintenance for the first petitioner/wife found to be appropriate and adequate.

8. As far as the second petitioner/daughter is concerned, relying upon the facts elucidated from the cross examination of the first petitioner wherein she admitted that the second petitioner eloped with one Kumar. She gave a complaint to the police. The police secured Kumar and her daughter/second

petitioner. At that time her daughter/second petitioner was found conceived and was on her family way. Taking this portion of deposition as admission, the first appellate Court has held that they need not be any further proof for second petitioner marriage with Kumar. Relying upon the judgment of Orissa High Court Sathyanarayana Dev vs. Kumari Rajamani Dev reported in 1986(1) CrL. 53, the first appellate Court has held that the married daughter is not entitled to claim maintenance from her father.

9. For the above reasons, the appellate Court, while confirming the maintenance amount awarded to the first petitioner, reversed the finding of the trial Court in respect of the maintenance awarded to the second petitioner. Aggrieved by that, the present revision petition is filed by the petitioners.

10. The learned counsel appearing for the petitioners would submit that under Section 125, if the petitioners are able to establish the fact that father has failed to maintain her and she has no sufficient source income, even if she is married, right of claiming maintenance against the father will not extinguish for the reason that the daughter was married. Furthermore in this case, when there is no proof that the second petitioner was married, except admission by the first petitioner in her cross examination that the second petitioner eloped with one Kumar. The said admission will not amount to prove of marriage.

11. The learned counsel appearing for the respondent would submit that it is for the second petitioner to prove that she is not married and having elucidated from the mouth of the mother that the second petitioner had already eloped and was living with one Kumar under the same roof, this Court has to presume that she is married. This submission made by the learned counsel appearing for the respondent is neither legal nor appealing to prudence. The lower appellate Court has erroneously declined the relief sought by the second petitioner for erroneous reason.

12. The judgment relied on by the lower appellate Court on facts does not apply to the present case. When the marriage itself is not proved or accepted, the lower appellate Court ought not to have given much importance to the admission of the first petitioner regarding elopement of the second petitioner with Kumar. Factum of marriage cannot be presumed, if elopement and temporary living in a roof together with opposite sex is proved or admitted. Such a presumption will render, the procedure and the laws which governs the marriage of various sectors redundant. Therefore, the perverse finding of the lower appellate Court is bound to be set aside.

13. Accordingly, the Criminal Revision Case is allowed. The order of the Judicial Magistrate No.II, Gobichettipalayam is restored. The respondent is bound to maintain his unmarried daughter, till he is able to establish that the second petitioner/daughter is validly marriage and capable of maintaining herself or maintained by her husband so as to exonerate him from the mandatory responsibility caused upon him under Section 125 Cr.P.C. As far as the maintenance amount fixed for the first petitioner/wife, it is open to her to seek enhanced compensation afresh if she desires.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Sessions Judge/Fast Track Court No.II, Gobichettipalayam.

2.The Judicial Magistrate No.2, Gobichettipalayam.

+1 cc to Mr.V.Anandhamurthy, Advocate Sr.No.11495

Copy To:

The Section Officer,
Criminal Section, High Court, Madras.

Cr1.R.C.No.192 of 2012

PA(CO)
CSL/12.03.2019

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