

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2018

DELIVERED ON: 27.02.2019

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Cr1.R.C.No.509 of 2015

and

M.P.No.1 of 2015

C.Vaiyapuri

... Petitioner

vs.

Rajathi

... Respondent

Criminal Revision Case No.509 of 2015 is filed under section 397 r/w 401 of Cr.P.C. to call for the records pertaining to passing the order dated 15.04.2012 in M.C.No.1 of 2013 on the file of the Judicial Magistrate No.I, Mettur and set aside the same.

For petitioner : Mr.B.Sundar

For respondent : Mr.R.Thirunanam
for M/s.S.S.Annadurai

ORDER

This Criminal Revision Case has been filed by the petitioner challenging the order passed by the learned Judicial Magistrate No.I, Mettur in M.C.No.1 of 2013, dated 15.4.2012, allowing the petition filed by the respondent under Section 125 Cr.P.C. and directing the petitioner to pay monthly maintenance of Rs.3,000/- to the respondent and also arrears from the date of petition.

2. The respondent has filed M.C.No.1 of 2013 alleging that the marriage between herself and the petitioner was solemnized on 02.07.2009 in Siththar Koil at Elampillai as per their customs. After the marriage, they lived as husband and wife at Salem Steel Plant quarters for 10 days. While living as husband and wife, the petitioner treated the respondent cruelly

and also tortured her and sent her out of the matrimonial home. After coming to the parental home, the respondent convened panchayats for reunion, however, the petitioner has not cared to take back the respondent. As dutiful husband, the petitioner is bound to pay maintenance to the respondent and the petitioner neglected to maintain her. On 12.12.2011, the respondent sent a legal notice to the petitioner by marking a copy to the higher officials of the petitioner. Despite receipt of the notice, the respondent has not given any reply. On 15.2.2012, the respondent lodged a police complaint before All Women Police Station, Omalur. The parents of the respondent were not able to maintain the respondent. The petitioner was working as Senior Technician in Salem Steel Plant and was receiving salary of Rs.1 lakh per month. Further, he was getting agricultural income of Rs.10 lakhs from his agricultural lands. Hence, the respondent prayed for monthly maintenance of Rs.10,000/-.

3. Resisting the petition, the petitioner filed counter stating that he was previously married one lady, which marriage ended in divorce in the year 2008 and thereafter, he was on the look out for another bride to get remarried and came across the respondent through the pressure of one Govindan, who was a marriage broker. But after enquiry, the petitioner came to know that the respondent was previously married and had a 6 years old daughter through the previous marriage and due to torture of the respondent and her family members, her previous husband committed suicide by consuming poison in front of their house. It is stated that the respondent through the marriage broker and his friends threatened the petitioner with dire consequences and the petitioner refused to marry the respondent. Thereafter, the respondent filed a false police complaint before the All Women Police Station, Omalur and after an enquiry, the Inspector of Police had not registered the FIR. It is further stated that since all her extortion attempts failed, the respondent has filed the petition seeking maintenance. It is stated that when the petitioner denied the marriage with the respondent, the petition for maintenance filed by the respondent is not maintainable and prayed for dismissal of the same.

4. Before the learned Magistrate, the respondent examined herself as P.W.1 and one Kandasamy and Chinnapaiyan were examined as P.W.2 and P.W.3 and marked Exs.P1 to P4. No oral and documentary evidence was adduced on the side of the petitioner.

5. The learned Magistrate, by the impugned order, allowed the petition directing the petitioner to pay monthly maintenance of Rs.3,000/- to the respondent and also directed to pay arrears from the date of filing of the petition. Aggrieved by the same, the petitioner has filed the present Criminal Revision Case.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

7. Assailing the order of the learned Magistrate, the counsel for the petitioner submitted that the learned Magistrate erroneously concluded that the petitioner is unfit for family life without any proper expert medical evidence adduced by the respondent and has blindly accepted the statement of the respondent that she lived for only 10 days with the petitioner. He would submit that the learned Magistrate wrongly shifted the burden of proof on the petitioner to disprove the allegation of the respondent and did not appreciate that when the respondent herself been discredited as a witness, the other witnesses viz., P.W.2 and P.W.3, who are neighbours are totally unreliable to prove the alleged marriage of the respondent with the petitioner.

8. The learned counsel further submitted that though the learned Magistrate admitted that there is no income proof of the petitioner, still proceeds to fix the maintenance without any logical or reasonable basis whatsoever.

9. The learned counsel next submitted that the learned Magistrate erred in stating that repeated opportunity was given to the petitioner to file his proof affidavit and documents and his advocate has failed to do so. In fact, no such opportunity was given and when the petitioner filed a petition to examine the father and brother of the respondent, the said petition was dismissed by the learned Magistrate at the first instance itself. Thus, the learned Magistrate has violated the principles of natural justice and the learned counsel thus prayed for setting aside the order impugned in this Revision Case.

10. Per contra, the learned counsel for the respondent, reiterating the findings recorded by the learned Magistrate, submitted that despite opportunity given to the petitioner, he has not produced any witness, nor examined himself. Finding valid marriage exists between the respondent and the petitioner and that the petitioner deserted the respondent and also taken note of the financial capacity, the learned Magistrate directed the petitioner to pay maintenance to the respondent. In fact, the learned Magistrate ordered lesser amount and the same cannot be interfered with.

11. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

12. From the pleadings of the parties, it is seen that the respondent pleaded that the petitioner married her on 2.7.2009

in Sithar Koil, Elampillai, Salem District and the respondent lived with the petitioner for 10 days in the matrimonial home. It is the say of the respondent that the petitioner is unfit for family life and he has given intolerable torture and sent her out of the matrimonial home. In order to meet her livelihood, she needs maintenance from the petitioner.

13. On the other hand, the petitioner denied the marriage with the respondent and there is no question of paying maintenance to the respondent. It is the say of the petitioner that in order to grab money from the petitioner and also to give hardship to him, the respondent had filed the maintenance case and the learned Magistrate, without affording an opportunity, had mechanically passed the impugned order.

14. In the impugned order, the learned Magistrate, after setting forth the pleadings of parties and also evidence of respondent's side witnesses, came to the conclusion that there exists a valid marriage between the petitioner and the respondent and that the petitioner is unfit for family life. The learned Magistrate also held that the petitioner treated the respondent cruelly and because of the torture given by the petitioner, the respondent left the matrimonial home and was living with her parental home. Therefore, the respondent is entitled to get maintenance under Section 125 Cr.P.C. from the petitioner.

15. When the respondent alleged that the petitioner is unfit for family life, it is bounden duty of the respondent to prove the same. Further, when such being the case of the respondent, the learned Magistrate ought to direct the respondent to undergo medical examination to ascertain the claim of the respondent that the petitioner is unfit for family life. Without such medical examination, the learned Magistrate cannot arrive at such a conclusion. Instead, the learned Magistrate wrongly shifted the burden on the petitioner to disprove the allegation of the respondent. Mere statement of the respondent, the learned Magistrate, held that the petitioner is unfit for family life. Such a finding of the learned Magistrate cannot be appreciated.

16. In the present case, the respondent has failed to show any record to prove the marriage between the respondent and the petitioner. The only evidence produced by the respondent to prove the marriage of the respondent with the petitioner is the oral evidence of P.W.2 and P.W.3, who are stated to be neighbours and nothing more. The learned Magistrate though appreciated the fact that the petitioner has denied the marriage and any form of association with the respondent has erroneously concluded that it is upto the petitioner to disprove the case of

the respondent, which is against the principles of Indian Evidence Act, which clearly stipulates that the burden of proof of proving the case lies upon the person making the allegation or filing the case.

17. Though the learned Magistrate, in the impugned order, stated that despite repeated opportunity given to the petitioner, he has not filed his proof affidavit and documents. The learned Magistrate has not given the particulars qua adjournments given to the petitioner to file his proof affidavit. Thus, it is clear that without affording sufficient opportunity, the learned Magistrate passed the impugned order. Moreover, the financial capacity of the petitioner has not been discussed while determining the maintenance amount. Therefore, on the sole ground of violation of principles of natural justice, the order impugned in this Criminal Revision Case is liable to be set aside.

18. In the result,

(a) The Criminal Revision Case is allowed by setting aside the order in M.C.No.1 of 2013, dated 15.4.2015 on the file of the learned Judicial Magistrate No.1, Mettur.

(b) The matter is remanded back to the learned Judicial Magistrate No.1, Mettur for fresh consideration. The learned Judicial Magistrate No.1, Mettur is directed to give fair opportunity to both the parties to establish their respective case.

(c) Both the petitioner and the respondent are at liberty to adduce oral and documentary evidence.

(d) The learned Judicial Magistrate No.1, Mettur is directed to dispose of the case in M.C.No.1 of 2013 within a period of three months from the date of receipt of a copy of this order uninfluenced by the order of this Court.

(e) No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (J)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Judicial Magistrate No.I,
Mettur.

2.The Chief Judicial Magistrate,
Salem.

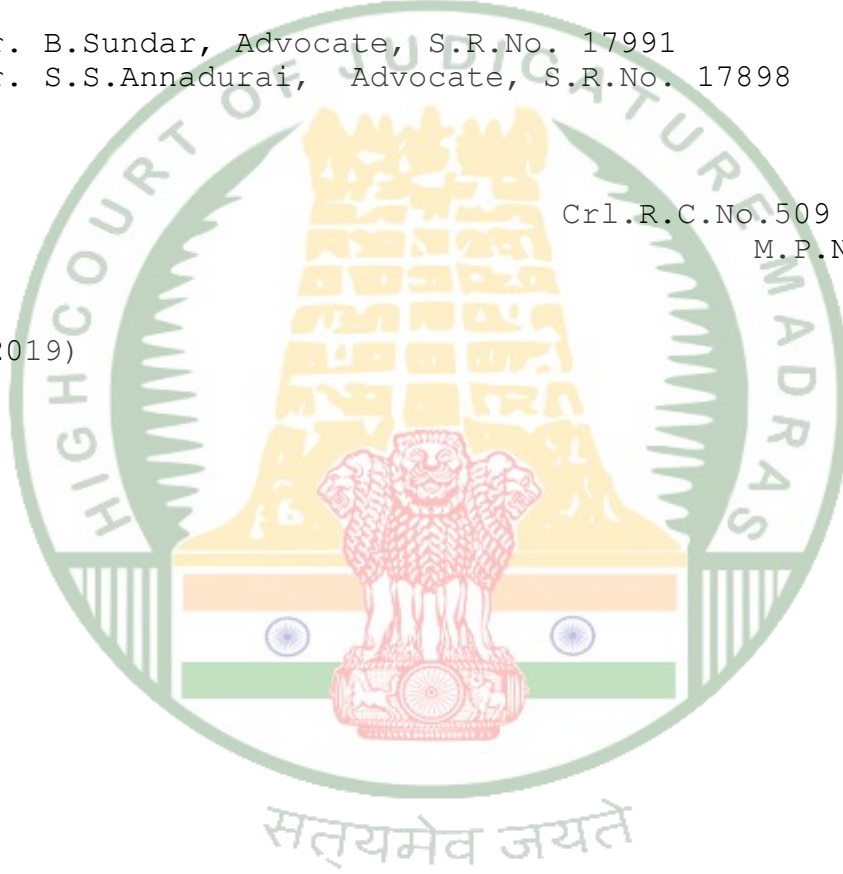
3. The Section Officer,
Criminal Section,
High Court, Madras.

+2cc to Mr. B.Sundar, Advocate, S.R.No. 17991

+1cc to Mr. S.S.Annadurai, Advocate, S.R.No. 17898

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M.P.No.1 of 2015

GN(26/03/2019)



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