

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.08.2020

DELIVERED ON: 18.08.2020

CORAM :

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.180 of 2020 & Crl.M.P. No.1361 of 2020

K. Harikrishnan Petitioner/Petitioner

vs.

1 G. Sumathi

2 Stella

3 Samuel

Respondents/Respondents

Criminal Revision under Sections 397 and 401 Cr.P.C. seeking to set aside the order dated 08.11.2019 passed by the III Additional Family Court, Chennai in M.C. No.287 of 2006.

For petitioner Mr. R. Abubucker

For respondents Mr. R. Krishnamurthy

ORDER

For the sake of convenience, the parties will be referred to by their names.

2 The facts in brief are as under:

2.1 It is the case of Sumathi that Harikrishnan married her on 15.06.1989 in Thulukkathi amman Kovil and through the wedlock, Stella and Samuel were born to her; Harikrishnan forcibly sent them away from their house in 2005 and so, she went to her natal home to live with her parents.

2.2 Since Harikrishnan had failed to maintain her and her children, Sumathi filed M.C. No.287 of 2006 in the III Additional Family Court, Chennai, under Section 125 Cr.P.C. claiming Rs.7,000/- per mensem as maintenance. Harikrishnan entered appearance and questioned the very marital relationship with Sumathi and also the paternity of Stella and Samuel.

2.3 From 2006 to 2019, the case proceeded at a snail's pace. Sumathi filed an application for DNA profiling which was hotly contested by Harikrishnan and ultimately, on the orders of the Court, all the four were subjected to DNA profiling by the experts in the Tamil Nadu Forensic Sciences Laboratory and the

report dated 14.08.2018 (Ex.C.1) clearly showed that Harikrishnan had fathered Stella and Samuel through Sumathi. Sumathi examined herself as P.W.1 and marked five exhibits. Harikrishnan examined himself as R.W.1 and his first wife Rani as R.W.2 and marked fourteen exhibits. The DNA report was marked as Ex.C.1.

2.4 After considering the evidence on record, the trial Court, by order dated 08.11.2019 in M.C. No.287 of 2006, directed Harikrishnan to pay maintenance to Sumathi, Stella and Samuel as follows:

- Rs.5,000/- per mensem to Sumathi from the date of the petition;
- Rs.2,000/- per mensem to Stella from the date of the petition; and
- Rs.1,08,000/- to Samuel @ Rs.2,000/- per mensem from the date of the petition, for a period of four years and six months.

2.5 Challenging the said order, Harikrishnan has filed this criminal revision.

3 Heard Mr. R. Abubucker, learned counsel for Harikrishnan and Mr. R. Krishnamurthy, learned counsel for Sumathi, Stella and Samuel.

4 Initially, this criminal revision was filed through Mr.P.Solomon, advocate, on 23.01.2020. When the matter came up for admission on 04.02.2020, it was represented that Mr. Solomon had given change of vakalat to Mr. George Williams. Hence, the name of Mr.George Williams was printed in the cause list. Thereafter, the matter was adjourned to 10.02.2020, on which date, the counsel for the petitioner sought adjournment. When the matter was listed on 17.07.2020, there was no representation for the petitioner. On 20.07.2020, further adjournment was sought and the case was posted to 03.08.2020, on which date, Mr.Shanmuga Velayudham (Enrolment No.2691 of 2010), Advocate, represented that the petitioner had given change of vakalat and sought adjournment on that ground. Ultimately, on 07.08.2020, Mr.R.Abubucker entered appearance for Harikrishnan and argued the case. This Court heard Mr.R.Krishnamurthy, learned counsel for Sumathi, Stella and Samuel also.

5 Mr. Abubucker contended that Harikrishnan was married to Rani (R.W.2) on 26.08.1982 and he has three children, viz., Vimal, Selvi and Rajkamal, through Rani (R.W.2) and therefore, the alleged marriage with Sumathi is not valid in the eye of law. He further contended that when Sumathi had claimed only

Rs.7,000/- totally, in her maintenance petition, the trial Court ought not to have awarded maintenance beyond the said claim. It is his further stand that Sumathi had not filed any proof to show that she is the legally wedded wife of Harikrishnan.

6 Per contra, Mr. Krishnamurthy, learned counsel for Sumathy, Stella and Samuel, refuted the contentions put forth by Mr. Abubucker.

7 This Court gave its anxious consideration to the rival submissions.

8 Sumathi, in her evidence, has stated that Harikrishnan married her on 15.06.1989 in Thulukkathiammam Kovil and after marriage, she gave birth to Stella and Samuel. Their birth certificates were marked as Exs.P.3 and P.4 respectively. Sumathi has also marked the photograph that was taken with Harikrishnan as Ex.P.1 and the copy of the family card showing Harikrishnan as the head of the family was marked as Ex.P.2. On the contrary, Harikrishnan completely denied the relationship with Sumathi and also the birth of two children through him.

9 Therefore, on the orders of the Court, DNA profiling was done and it was established beyond cavil that Stella and Samuel were born to Harikrishnan and Sumathi. Though Rani was examined as R.W.2 and she stated that she was the legitimate wife of Harikrishnan having married him earlier, yet, the fact that Harikrishnan has had long cohabitation with Sumathi has been established beyond reasonable doubt. Further, Sumathi has stated in her evidence that she was not aware that Harikrishnan was married to Rani (R.W.2) and that he had suppressed his marriage with Rani (R.W.2) from her (Sumathi). After the Court had ordered for DNA profiling, Harikrishnan had challenged the same in the High Court which was negatived with costs of Rs.10,000/-. Thus, it is clear that from 2006 to 2019, Harikrishnan has been adopting every possible trick under the sun to prolong the case without giving a naya paisa to Sumathi or her two children. The trial Court was perfectly justified in relying upon the judgment of the Supreme Court in Kamala and others vs. Mohan Kumar¹, for coming to the conclusion that the oral and documentary evidence produced by Sumathi coupled with DNA report, proves her marriage with Harikrishnan.

10 Coming to the quantum of maintenance, it is seen that Harikrishnan is working in the Madras Port Trust and earns Rs.20,000/- per mensem, apart from other allowance like overtime allowance, etc. Just because in the petition that was filed in the year 2006, Sumathi had claimed only Rs.7,000/- as

1 2018 (14) Scale 257

maintenance for maintaining herself and her two children, the Family Court is not denuded of the power to fix the maintenance amount keeping in mind the cost of living index prevailing on the date of the passing of the final order, i.e., 2019 in this case.

In the result, this criminal revision is dismissed as being devoid of merits. Connected Crl.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1 The III Additional Family Judge.
Chennai.

2 The Public Prosecutor.
High Court, Madras.

+ 1cc to Mr.R.Krishnamurthy, Advocate in Sr.No.26921

+ 1cc to Mr.R.Abu Bucker, Advocate in Sr.No.27197

Crl.R.C. No.180 of 2020

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सत्यमेव जयते

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