



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C. (MD)No.492 of 2016

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1. Gurunatha Muthalagi
2. Minor Sudhakaran
3. Minor Sundar Raman

(Minors are represented
by their mother/first petitioner)

... Petitioners/Respondent/
Petitioner

versus

1. Venkatachalam
2. S.Maharasi

...Respondents/Appellant/
Respondent

Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C. to call for the records in Crl.A.No.28 of 2015 on the file of the II Additional District and Sessions Judge, Thoothukudi and set aside the judgment dated 05.02.2016 and restore the compensation order passed by the judicial Magistrate No.I, Thoothukudi, Thoothukudi District in M.C.No.16 of 2011 by the Order dated 05.03.2015

For Petitioners	:	Mr.A.Thiruvadikumar
For R1	:	Mr.P.Samuel Gunasingh
For R2	:	Mr.Swarnam J.Rajagopalan

ORDER

This Criminal Revision Case has been filed as against the Judgment dated 05.02.2016 passed in Crl.A.No.28 of 2015 on the file of the learned II Additional District and Sessions Judge, Thoothukudi.

2. Originally, the petitioners herein filed a maintenance petition in M.C.No.16 of 2011 before the learned Judicial Magistrate No.I, Thoothukudi. The trial Court, after enquiry, vide order dated 05.03.2015, passed an order directing the husband/first respondent to pay a sum of Rs.3,000/- p.m. each to the petitioners towards maintenance and also to pay a sum of Rs.2,00,000/- each to the petitioners as compensation. Aggrieved over the same, the respondents herein filed an appeal in Crl.A.No.28 of 2015 before the learned II Additional District and Sessions Judge, Thoothukudi. The Appellate Court, vide order dated 05.02.2016, partly allowed the appeal, confirming the order of maintenance amount of Rs.3,000/- p.m. each to the petitioners, however, dismissing the order of



payment of compensation of Rs.2,00,000/- each to the petitioners. Aggrieved over the same, the present Criminal Revision Case is filed.

3. Today, when the matter is taken up for hearing, it is submitted that pending this revision case, the first respondent/husband died.

4. It is seen from the records that before the trial Court, the husband/first respondent, in his cross examination, stated that he was working as Head Constable at Saidapet Police Station and his gross salary was Rs.30,000/- and he has no objection to pay a sum of Rs.9,000/- towards maintenance to his wife and sons. He further stated that the second respondent is not related to him and the child born to the second respondent was not born through him, for which, he would be ready for DNA Test. During the examination, the first petitioner/wife deposed that her husband was working in the Police Department and he was not paying any maintenance amount to her. Apart from the evidence of husband and wife, a report was submitted by a Social Activist, who examined the husband and wife and the general public nearer to them. The report says that the husband lived separately for the past eight years and the second respondent herein is his servant-maid. The report further says that while examining the general public, they said that the first respondent herein married the second respondent and both of them lived together. Therefore, the trial Court has come to the conclusion that the first respondent married the second respondent and due to their wedlock, a child was born to them. Further, the trial Court held that the first respondent herein, without getting any divorce order, got married the second respondent, due to which, the petitioners/wife and sons would have suffered mental agony. Therefore, the trial Court ordered for maintenance of Rs.3,000/- each to the wife and sons and also ordered for compensation of Rs.2,00,000/- each to the wife and sons towards mental agony.

5. Before the Appellate Court, the first respondent/husband shows no objection with regard to the payment of maintenance of Rs.3,000/- each to the wife and sons. However, he refuted the second marriage, alleged by the first petitioner and there was no proof for the said allegation and therefore, the claim made by them for compensation towards mental agony cannot be said to be correct. There was no representation on the side of the wife and sons before the Appellate Court. The Appellate Court, after perusing the records, held that the wife, in her affidavit, stated that the marriage was held between her husband and the second respondent on 20.03.2011, which was seen by her mother, namely, Pitchammal; but, the said Pitchammal was not examined before the trial Court and there was no reason assigned on the side of the wife for non-examination of her mother. That apart, no documentary evidence was produced on the side of the wife to prove the marriage held between her husband and the second respondent and therefore, the



compensation of Rs.6,00,000/- awarded by the trial Court towards mental agony was dismissed by the Appellate Court. However, the Appellate Court allowed the maintenance amount of Rs.3,000/- each to the wife and sons, as there was no objection on the side of the husband.

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6. On a combined reading of both Judgment, it clearly reveals that before the trial Court, except the report of the Social Activist, there are no documentary evidence to prove the marriage held between the first respondent and second respondent. Moreover, when it is the case of the wife that her mother had seen the marriage held between the first and second respondents and she informed the same to her, she was not examined before the trial Court. Furthermore, while at the time of cross examination before the trial Court, the wife has also not disclosed about the same and not even before the Social Activist. Moreover, even before this Court, the wife has not filed any documentary evidence to prove the marriage held between the first and second respondents. Therefore, this Court is of the view that the Judgment of the Appellate Court does not warrant any interference.

7. In view of the above, the Criminal Revision Case is dismissed, confirming the Judgment dated 05.02.2016 passed in Crl.A.No.28 of 2015 on the file of the learned II Additional District and Sessions Judge, Thoothukudi. However, the petitioners are at liberty to claim arrears of maintenance, if any.

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The II Additional District and Sessions Judge, Thoothukudi, Thoothukudi District.
- 2.The Judicial Magistrate No I, Thoothukudi

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KB(10.09.2020) 3P 3C