

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	10.02.2020
Date of Judgment	10.06.2020

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Cr1.RC(MD)No.636 of 2016**

Sahayamary : Petitioner/Petitioner

Vs.

John : Respondent/Respondent

Prayer: Criminal Revision filed under sections 397 and 401 of the Code of the Criminal Procedure against the order, dated 17.06.2016 passed in MC No.2 of 2011 by the Judicial Magistrate, Periyakulam.

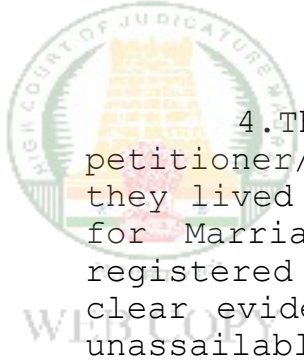
For Petitioner : Mr.G.Aravinthan

For Respondent : Mr.T.Sekar
(Legal Aid Counsel)**O R D E R**

This criminal revision is directed against the order, dated 17.06.2016 passed in MC No.2 of 2011 by the Judicial Magistrate, Periyakulam.

2.The marriage between the petitioner/wife and the respondent/husband was solemnised and the same was registered on 25.05.1995 with the Sub Registrar of Periakulam. The respondent/husband got permanent job as 'Helper' in TNEB in the year 2008. Thereafter, due to matrimonial tiff, the petitioner/wife was sent out from the matrimonial home and the respondent/husband started to live with one Mahalakshmi and based on the complaint lodged by the petitioner/wife, FIR has been registered in Crime No.17 of 2011 for the offence under sections 498-A, 406, 494 IPC r/w section 4 of the Tamil Nadu Prohibition of Harassment of Women Act against the respondent/husband and the persons, who cause for the second marriage of the respondent. The petitioner filed a petition in MC No.2 of 2011 before the Judicial Magistrate, Periyakulam, seeking maintenance of Rs.5,000/- per month from the respondent/husband. The learned Magistrate dismissed the said petition on 17.06.2016. Aggrieved by the same, the petitioner/wife is before this court.

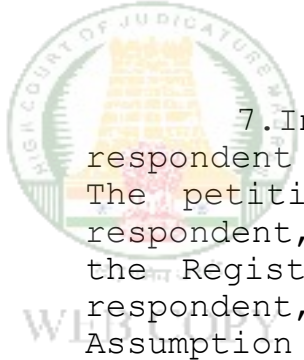
3.Heard the learned counsel appearing on either side and perused the materials available on record.



4.The main contention raised on the side of the petitioner/petitioner is that when the petitioner has stated that they lived as husband and wife, pursuant to the Registered Agreement for Marriage, dated 25.05.1995 between her and the respondent, registered with the Sub Registrar No.1, Periyakulam, the same is a clear evidence to prove the marriage between them and Ex.P1 is an unassailable document and the same cannot be disbelieved and Ex.R1 produced on the side of the respondent to prove the marriage between the petitioner and the brother of the respondent, but it was not produced and marked through the author of the document or through the authorised person from the concerned Church and Ex.R3 the FIR in Crime No.17 of 2011 categorically proved the relationship between the petitioner and the respondent as wife and husband and the same has been admitted by the respondent and Ex.R1 has neither any legal value nor any evidential value and hence, Ex.R1 has to be rejected by the trial court and the petitioner is the wife of the respondent and the respondent failed to maintain the petitioner and hence, the petitioner is entitled to maintenance and prays that the criminal revision may be allowed.

5.On the other hand, the learned counsel appearing for the respondent/respondent argued that there was no marriage between the respondent and the petitioner and the above marriage was not registered and the marriage between the petitioner and the brother of the respondent was held on 04.06.1992 in a Church as per the Christian Custom and due to misunderstanding between the brother of the respondent and the petitioner, the petitioner deserted her husband and lived separately and the respondent worked in TNEB on contract basis and the respondent has to maintain his family members and the respondent married one Mahalakshmi and lived with her and the petitioner is not the wife of the respondent and there was no dowry demand as stated by the petitioner and the petitioner gave a false complaint against the respondent and there was no marriage between the petitioner and the respondent and hence, the respondent is not liable to pay maintenance to the petitioner and prays that the criminal revision has to be dismissed.

6.In this case, the petitioner stated that the marriage between her and the respondent was registered as per Ex.P1 and hence, she is the wife of the respondent and the respondent failed to maintain her and hence, the respondent is liable to maintain her and prays that she is entitled to maintenance. But on the contrary, the respondent stated that only his brother Dominic Xavier married the petitioner and they lived as husband and wife and there was no marriage between him and the petitioner and the petitioner is not his wife and hence, he is not liable to pay maintenance to the petitioner. Hence, in this case, it is necessary to decide whether the petitioner and the respondent were lived as wife and husband and the respondent failed to maintain the petitioner and the respondent is liable to maintain the petitioner.



7. In this case, the petitioner was examined as PW1 and the respondent was examined as RW1 and his brother was examined as RW2. The petitioner in order to prove that she is the wife of the respondent, filed the Registration of Marriage Certificate issued by the Registrar, Periyakulam. To disprove it, on the side of the respondent, the Marriage Certificate issued by the Priest of Assumption Church, Athoor, Dindigul was produced and it was marked as Ex.R1. On perusal of Ex.R1, it is seen that the petitioner was shown as bride and one Dominic Xavier was shown as bride groom. In Ex.R1, on the side of bride groom and bride, witnesses have not signed and in Ex.R1 Church Rev. Father Ashirvadhan alone signed. But no signature of the Member was found. Ex.R1 was denied by the petitioner. Hence, it is the bounden duty of the respondent to prove it. Further, in this case, Ex.R1 was not produced and marked through the author of the document. The respondent has not taken any steps to prove Ex.R1. Hence, it is held that Ex.R1 was not proved and it has no evidentiary value and it is not a valid one. In this case, to prove the marriage between the brother of the respondent and the petitioner, the respondent examined his brother as RW2. RW2 stated that he only married the petitioner and they lived as husband and wife and due to misunderstanding between him and the petitioner, the petitioner deserted him and he has taken steps for reunion, but the petitioner refused to come and she gave the complaint against the respondent and his family members and the petitioner is his wife and she is not the wife of the respondent and hence, the respondent is not liable to pay any amount.

8. Already, it was decided that Ex.R1 was not proved. Hence, it is held that Ex.R1 has no evidentiary value and it is not a valid one. Therefore, the evidence of RW1 and RW2 stating that the petitioner is the wife of the brother of the respondent is not at all acceptable. To prove that the petitioner is the wife of the respondent, the petitioner filed Ex.P1 Registered Marriage Certificate. Ex.P1 was not denied by the respondent.

9. The learned counsel appearing for the petitioner submitted that the Judicial Magistrate has no competent to decide the validity of the marriage in the matrimonial case and in the matrimonial case, the Magistrate is bound to decide whether the wife is entitled to maintenance or not. But in this case, the Magistrate determined the validity of the marriage between the petitioner and the respondent and hence, the order passed by the trial court is liable to be set aside. For that, the learned counsel appearing for the petitioner submitted a ruling reported in **2003 MLJ (Cr1) 204 (Seerangan Vs. Selvi)**. In that case, it is held as follows:-

"16. Further, the Magistrate in a petition filed under Section 125 Cr.P.C for maintenance, is not competent to decide the validity of marriage like a civil Court. If the Magistrate has any doubt, as observed in the case of Rudramma vs. H.R.



Puttaveerabhadrappe reported in 1987 CrI. L.J. 677 (Karnataka High Court), the proper course is to grant maintenance, leaving husband to establish invalidity in competent Court. Further, in a petition filed for maintenance, if the husband takes a plea that there is a first marriage with another lady and the present claim is not maintainable, the burden is on the husband and it is for him to satisfactorily prove the subsistence of earlier marriage, which is legal and valid. Section 125 Cr.P.C. is meant to achieve a social purpose and it provides speedy remedy to the deserted wife. In the light of the above object and in view of the fact that the petitioner - husband, miserably failed to satisfactorily prove the subsistence of earlier marriage, which is legal and valid and of the fact that the respondent herein has established that her marriage with the petitioner by acceptable evidence, I am in agreement with the conclusion arrived at by the learned Magistrate. Further, the defence of the husband that while respondent herein was doing cooli work, he had an intimacy with her and kept her for a period of 1 « years cannot be accepted and it is also improbable. I have already referred to the fact that no other person from his place was examined in support of his claim and the same was rightly rejected by the learned Magistrate."

10. In **(2007)1 MLJ (Cri) 547 (Rahima @ Pyari Vs. Kumari and another)**, it has been held as follows:-

"8. I have perused the materials available on record and heard the submissions made. In a case reported in 1999 SCC (Cri) 1345 Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit and another, it has been held as follows:

"6. Learned counsel for the appellant at the time of hearing had not disputed the paternity of the child. Hence, the question is whether the marriage between the appellant and Respondent 1 was valid or invalid? In our view, validity of the marriage for the purpose of summary proceedings under Section 125 Cr.P.C is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceedings is not as strict as is required in a trial of offence under Section 494 IPC. If the claimant in proceedings under Section 125 of the Code succeeds in showing that she and the respondent have lived



together as husband and wife, the Court can presume that they are legally wedded spouses and in such a situation, the party who denies the marital status can rebut the presumption....."

11. In **2003 MLJ (Crl) 2004 (Seerangan Vs. Selvi)**, it was held that the Magistrate is not competent to decide the validity of the marriage like a civil court and the proper course is to grant maintenance leaving husband to establish the invalidity in competent court. But in this case, the Magistrate has decided the validity of the marriage between the petitioner and the respondent. Hence, it is held that the Magistrate has no power to decide the validity of the marriage between the petitioner and the respondent and on that basis, the trial court dismissed the petition is not correct.

12. Further, on perusal of Ex.P1, it reveals that from 1995, both the petitioner and the respondent lived as husband and wife. In this case, the validity of Ex.P1 cannot be decided. The validity of Ex.P1 can be questioned in a civil court. Hence, Ex.P1 reveals that both the petitioner and the respondent lived as wife and husband. Further, the learned counsel appearing for the petitioner submitted that Ex.P1 reveals that the petitioner and the respondent lived as wife and husband in the nature of marriage and when the respondent deserted the petitioner and failed to maintain the petitioner, the petitioner is entitled to maintenance. For that, the learned counsel appearing for the petitioner submitted the rulings reported in **(2010)10 SCC 469 (D.Velusamy Vs. D.Patchaiammal)** and **(2011)1 SCC 141 (Chanmuniya Vs. Virendra Kumar Singh Kushwaha and another)**.

13. In **(2010)10 SCC 469 (D.Velusamy Vs. D.Patchaiammal)**, it has been held as follows:-

31. In our opinion a 'relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married :-

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.



above requirements, and in addition the parties must have lived together in a 'shared household' as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a 'domestic relationship'.

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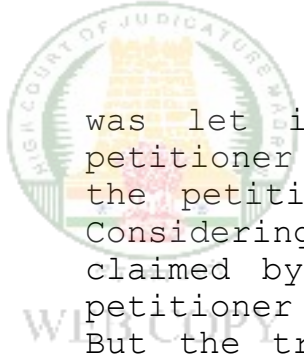
32. In our opinion not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage'

14. In **(2011)1 SCC 141 (Chanmuniya Vs. Virendra Kumar Singh Kushwaha and another)**, it has been held as follows:-

"26. Thus, in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de-facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent."

15. As per Ex.P1, it reveals that there was a domestic relationship between the petitioner and the respondent. In this case, as per Ex.P1, both the petitioner and the respondent lived for a long time and even though, they may not have undergone legal nexus of a valid marriage. Already the petitioner gave a complaint against the respondent and his family members in respect of the demand of dowry. To prove it, the petitioner filed the copy of the First Information Report (Ex.R5). On perusal of Ex.R5, no allegation was found as against RW2 and the respondent was remanded to judicial custody. Hence, from Ex.R5 also, it reveals that the petitioner and the respondent lived for a long time in domestic relationship and the respondent deserted without sufficient reason.

<https://hcservices.ecourts.gov.in/hcservices/> admitted on the side of the respondent that he is working in TNEB and hence, it is held that the respondent has capacity to pay maintenance to the petitioner. No contra evidence



was let in on the side of the respondent to prove that the petitioner has sufficient means to maintain herself. In this case, the petitioner claimed Rs.5,000/- per month towards maintenance. Considering the present cost of living and other aspects, the amount claimed by the petitioner is reasonable and it is held that the petitioner is entitled to Rs.5,000/- per month towards maintenance. But the trial court has wrongly come to the conclusion that the petitioner is not the wife of the respondent. Hence, it is necessary to interfere with the findings of the trial court.

17. In the result, this criminal revision is allowed. The impugned order, dated 17.06.2016 passed in MC No.2 of 2011 by the Judicial Magistrate, Periyakulam, is set aside. The petitioner is entitled to get Rs.5,000/- per month towards maintenance from the respondent. The respondent is directed to pay the maintenance amount from the date of filing of the maintenance petition.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

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To,

The Judicial Magistrate,
Periyakulam.

Crl.RC(MD)No.636 of 2016
10.06.2020

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