



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.08.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Cr1.O.P.No.1435 of 2016 and
Cr1.M.P.Nos.681 and 682 of 2016

Arumugam ... Petitioner / Respondent

Vs.

Shanthi @ Valli ... Respondent / Respondent

Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order dated 17.11.2015 made in C.R.P.No.4 of 2015 on the file of learned IV Additional District and Sessions Judge, Coimbatore, confirming the order dated 28.11.2014 made in M.C.No.1 of 2012 on the file of the learned Judicial Magistrate, Pollachi.

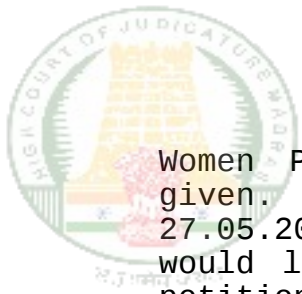
For Petitioner : Mr.B.Srinivasan

For Respondent : Mr.M.N.Balakrishnan

O R D E R

The present Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order dated 17.11.2015 made in C.R.P.No.4 of 2015 on the file of learned IV Additional District and Sessions Judge, Coimbatore, confirming the order dated 28.11.2014 made in M.C.No.1 of 2012 on the file of learned Judicial Magistrate, Pollachi.

2. The case of the respondent before the court below is that the petitioner, who is the maternal uncle's son of the respondent is working as Load Man in the Air Port, Sular. The petitioner and the respondent were in love with each other. Subsequently, the petitioner had married the respondent, however, the said information was not disclosed to any of their relative. When the petitioner and the respondent were living together in the said house, the respondent had received a sum of Rs.30,000/- and spent same. Thereafter, the petitioner had sent the respondent to her matrimonial house and on 16.05.2011, again, the petitioner had married one Manju at Krishnan Kovil, Guruvayur by suppressing the marriage with the respondent. Subsequently, on the same date, the respondent had lodged a complaint in the All

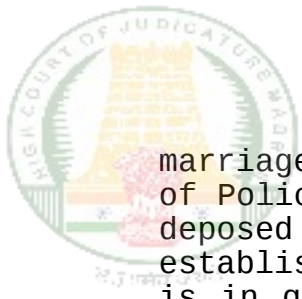


Women Police Station, Pollachi and C.S.R.No.225 of 2011 was given. When the petitioner was enquired by the police on 27.05.2011, he had given a statement in-writing stating that he would live with the respondent. In consequence there to, the petitioner and the respondent had entered into an affirmation deed, thereafter, the petitioner had never bothered to visit the respondent. Further, the respondent is residing in the rental house and sustained physical and mental agony without any income, while so, the petitioner is leading a comfortable life. On 05.12.2011, the respondent had sent a legal notice to the petitioner and the same was received by him on 08.12.2011. As the respondent is unable to go to work and maintain herself, seeking a sum of Rs.5,000/-, as maintenance, the respondent had filed M.C.No.1 of 2012.

3. Per contra, the petitioner, before the court below had denied all the averments stated by the respondent. Since the respondent is 15 years elder than the petitioner and he had obtained job at air port, the respondent had compelled to marry her. That apart, the petitioner is earning a sum of Rs.10,000/- per month as salary and with the said meager sum, it is difficult, even to maintain his family, as such, the petitioner cannot provide any maintenance to the respondent, who he had not even married. By the assurance given by the respondent that she would not cause any trouble, the petitioner had signed the deed dated 16.06.2011 before the Notary public and that there is no undertaking to repay the sum of Rs.30,000/-, which was borrowed earlier by the respondent. Also it is stated in the said Deed that the petitioner should meet the respondent weekly once at Makkinampatty, viz., house of the respondent and she should not object or disturb the marriage with Manjusha and would not cause trouble to his job. Moreover, there is no clause stated to provide any maintenance, hence sought to dismiss the petition.

4. Upon hearing the submissions on either side, the trial court had come to the conclusion that the respondent is the wife of the petitioner and inspite of sufficient means, the petitioner / husband had failed to maintain the respondent / wife and taking note of the prevailing circumstances, ordered to pay a sum of Rs.3,000/- per month towards maintenance from the date of petition in M.C.No.1 of 2012 dated 28.11.2014. Aggrieved against the same, the petitioner / husband has preferred C.R.P. No.4 of 2015 before the learned IV Additional District and Sessions Judge, Coimbatore. The learned Judge, upon considering the materials on record, submissions made on either side and the relevant provisions had confirmed the order passed in M.C.No.1 of 2012 and dismissed the revision petition on 17.11.2015. As against the same, the petitioner / husband is before this Court.

5. The learned counsel for the petitioner submits that the court below failed to see the crucial aspect of the alleged



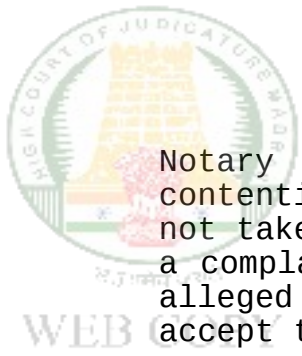
marriage between the petitioner and the respondent. The Inspector of Police, All Women Police Station was examined as P.W.2 and she deposed that there was no proof or witness or documents to establish the alleged marriage. When the alleged marriage itself is in question and crucial, the act of P.W.2 by non examination of persons available at the alleged place of residence, where the respondent claims that she married and lived with the petitioner, were not even looked into by the courts below.

6. The learned counsel for the petitioner contends that the courts below have failed to see the admission by P.W.2, the Inspector of Police that the petitioner does not know to read and write Tamil and only after detaining the ID card of the petitioner and under threat by the police, Ex.P.3 was executed. Hence he pleaded to set aside the order passed by the court below.

7. Per contra, the learned counsel for the respondent submits that since there was objection from the petitioner's brothers and sisters, the petitioner and the respondent got married at the residence of the petitioner at Sular by tying thali and the petitioner had also instructed the respondent not to reveal the said marriage to any of the family members. That apart, after one month of marital life, the petitioner had sent the respondent to her parents' house. Thereafter, suppressing the said marriage, the petitioner had married one Manjusha at Guruvayur. With no other option, the respondent had lodged a complaint and the matter was compromised. The petitioner and the respondent had entered into affirmation deed in the presence of a notary public, wherein the petitioner had agreed to visit the respondent once in a week and having failed to do so, the respondent, who has no source of income to maintain herself, had filed the application seeking maintenance. The said application seeking maintenance was considered, a sum of Rs.3,000/- was awarded by the trial court as maintenance and the same was also confirmed by the appellate court, as such, the same does not warrant any interference, he pleaded.

8. Heard the learned counsel on either side and perused the documents placed on record.

9. It is the contention of the respondent that the petitioner had married her at his residence in Sular on 23.01.2011 by tying thali, however, the petitioner denies the same. The admitted fact is that the petitioner is the maternal uncle's son of the respondent and as such, they had been moving together, which the petitioner claims as brother and sister, while the respondent claim as lovers. Further, the petitioner contends that after the marriage with one Manjusha, the respondent, by seizing his identity card at the police station had obtained his signatures under threat in Ex.P.3, before a



Notary Public without reading out to him. But the said contention and the denial of the petitioner that the marriage has not taken place, have no force, because a stranger would not give a complaint, as if she is his wife and even if so, just for the alleged identity card, a man of prudence could not be expected to accept that he had married the respondent.

10. Further, the petitioner had claimed that the respondent is almost 15 years older than him, the respondent, to disprove the same, had produced Ex.P.9, viz., her birth certificate, which shows as 25.10.1976 and the petitioner's Transfer Certificate, was marked as Ex.R.1, the same would show the date of birth of the petitioner as 29.12.1978, as such, the age difference is only two years, hence the age cannot be construed as a bar.

11. It is worthwhile for this Court to point out the Judgment of Hon'ble Supreme Court reported in Manu/SC/0807/2010 [Chanmuniya Vs. Chanmuniya Virendra Kumar Singh Kushwaha and Others, wherein it has been held that '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 defacto 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."

12. Moreover, as per Section 125 of Cr.P.C., the petitioner must have sufficient means, the word 'sufficient means' does not mean the tangible property or sources of income of the husband, but it is the capacity, potentiality and status of the husband. As far as the present case is concerned, the petitioner is working as a load man at the Sular Airport and earning sufficiently and the respondent had established that the petitioner has 'sufficient means'.

13. It is pertinent to point out that the petitioner had not even cared to see the respondent, as agreed in the Deed of Affirmation, viz., Ex.P3. In addition thereto, on 01.07.2021, this Court, at the request of the petitioner, had adjourned the present case on 09.07.2021 by directing the petitioner to deposit a sum of Rs.75,000/- to the account of the respondent / wife on or before 09.07.2021. When the present petition was taken up on 09.07.2021, it is informed that the petitioner has not complied with the above said direction, which was passed by this Court on 01.07.2021. From the said facts, it is evident that the petitioner had neglected to maintain the respondent, though the petitioner is having sufficient means.



14 Taking into consideration of the facts and circumstances of the case, the attitude of the petitioner and this Court being bound by the Judgment of Hon'ble Supreme Court, mentioned supra, is inclined to dismiss the present Criminal Original Petition.

Accordingly, the present Criminal original Petition is dismissed and the order passed in CRP No.4 of 2015 by the learned IV Additional District and Sessions Judge, Coimbatore is confirmed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The IV Additional District and Sessions Judge,
Coimbatore
2. The Judicial Magistrate,
Pollachi.

+1cc to Mr.B.Srinivasan, Advocate, S.R.No.39682
+1cc to Mr.M.N.Balakrishnan, Advocate, S.R.No.40130

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SV-I(CO)
SB(27/08/2021)