



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Cr1.R.C.No.829 of 2018

1. Karpagasasthriyammal

2. Rahul

...Petitioners/Petitioners

Vs

C.Mayilsami

...Respondent/Respondent

PRAYER: Criminal Revision case filed under Article 397 r/w 401 of Criminal Procedure Code, to set aside the order in MC.No.114 of 2011 dated 31.08.2017 passed by the learned Principal Family Judge, Coimbatore as far as the first petitioner is concerned.

For Petitioner : Mr.K.Thilageswaran

For Respondent : Mr.A.E.Ravichandran

O R D E R

This Criminal Revision case has been filed for setting aside the order in MC.No.114 of 2011 dated 31.08.2017 passed by the learned Principal Family Judge, Coimbatore.

2. The case of the petitioners is as follows:

The first Petitioner is the wife and the respondent is her husband. They fell in love with other and got married on 22.11.1998 at Patteeswarar Temple as per Hindu Rites and Customs. In the wedlock, the second petitioner was born. Disputes and misunderstanding arose between the spouses. Therefore, the first petitioner has filed a divorce petition in DVA.No.2 of 2013. During the pendency of the petition, the petitioners have filed a petition under Section 125 of Cr.P.C., claiming a sum of Rs.10,000/- for maintenance, before the learned Judge, Family Court, Coimbatore in M.C.No.114 of 2011. After hearing the arguments, and on a perusal of the materials, the said maintenance petition was rejected as against the first petitioner and a sum of Rs.4,000/- per month was awarded as maintenance to the second petitioner. As against the order of learned Judge, Family Court, Coimbatore, dated 31.08.2017, the petitioners have filed the present Revision Case before this Court.



3. The learned counsel appearing on behalf of the petitioners submitted that the first petitioner and the respondent fell in love with each other and they got married at Patteeswarar Temple. The same was not established before the trial Court properly. On the said sole ground, the maintenance petition was rejected in respect of the first petitioner. However, the first petitioner has produced many documents including the service records of the respondent before the trial Court to prove their marriage. It clearly reveals that the first petitioner is the wife and the second petitioner is the son of the respondent. But, the trial Court has accepted the second petitioner as biological son of the respondent. However, the trial Court rejected the marriage of the first petitioner and the respondent. Hence, the order dated 31.08.2017 made by the learned Judge, Family Court, Coimbatore in M.C.No.114 of 2011 is liable to be set aside.

4. The learned counsel for the respondent submitted that the respondent has admitted the paternity of the child. However, the marriage between the first petitioner and the respondent has not been established before the trial Court. The initial burden is on the first petitioner to prove that the first petitioner is the legally wedded wife. The learned counsel for the respondent further submitted that the first petitioner is the second wife of the respondent. The second wife have no rights to claim any maintenance from her husband before the Court, unless the marriage is established by adducing the oral and documentary evidence. In the present case, the respondent has already got married and was blessed with one female child. The first petitioner has not established her marriage. Hence, the trial Court rightly rejected the maintenance in respect of the first petitioner. Accordingly, the learned counsel prays for dismissal of the present petition.

5. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

6. Though the first petitioner has claimed that she is the legally wedded wife of the respondent, such plea was not accepted by the trial Court. Further, there is no dispute with regard to the paternity of the child. The crucial issue in the present case is whether the first petitioner is the legally wedded wife or not. Further, the respondent has already got married and he has a female child through the first marriage. However, the said contention was also rejected by the trial Court. Under these circumstances, the legal status of the first petitioner as well as the respondent has to be decided only by the competent civil forum and not by the Judicial Magistrate, who is dealing with the maintenance case under Section 125 Cr.P.C. Hence, without expressing any opinion in respect of the



marriage of the first petitioner and the respondent, this Court is inclined to dispose of the present revision case. However, this Court has to decide whether any justification denying the maintenance of the first petitioner. In order to prove the marriage and the relationship between the the first petitioner and the respondent, she has produced the service record of the respondent, in which, the respondent has mentioned that the first petitioner is the wife and the second petitioner is the son. Under such circumstances, the said document is sufficient to pay the maintenance in respect of the first petitioner and she is entitled to get maintenance from the respondent. Hence, this Court is inclined to interfere with the order passed by the learned Judge, Family Court, Coimbatore. Accordingly, the respondent is directed to pay a sum of Rs.3,000/- per month to the first petitioner and to pay a sum of Rs.4,000/- per month to the second petitioner, on or before fifth of every English Calender month, from the date of the petition in M.C.No.114 of 2011 without any default.

7. With the above discussion, this criminal revision case is allowed. Consequently, connected miscellaneous petition is also closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rli  
To

The Principal,  
The Family Court Judge,  
The Family Court, Coimbatore.

+1 CC to Mr.A.E.Ravichandran, Advocate, Sr.No. 37529.  
+1 CC to Mr.K.Thilageswaran, Advocate, Sr.No.38121.

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SRA(CO)  
LS(21/09/2021)