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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.R.C.No.867 of 2017

AND

Cr1.M.P.No.8079 of 2017

Kathiresan

...Petitioner

Vs.

Gowri

...Respondent

Prayer : Petition filed under Section 397 r/w. 401 of Cr.P.C., seeking to allow this revision and set aside the order dated 18.04.2017 M.C.No.56 of 2009 on the file of Family Court, Pondicherry.

For Petitioner : Mr.S.M.Muralidharan

For Respondent : Mr.K.Govi Ganesan

O R D E R

The petitioner has filed this petition seeking to set aside the order dated 18.04.2017 passed in M.C.No.56 of 2009 by the Family Court, Pondicherry.

2.The case of the petitioner is that the marriage between the petitioner and the respondent was solemnized on 28.09.2006 at Pondicherry as per the Hindu Rites and Customs. The said marriage was an arranged marriage. After marriage, the petitioner came to know that the respondent was suffering from mental illness even before the marriage and the said fact had been suppressed by her parents. The respondent had not consummated due to the impotent, strange and bizzare conduct, erratic behaviour of her during the nuptial night. Thereafter, when the petitioner called the respondent's father over phone and informed him about the respondent's strange behaviour, he admitted the mental illness of the respondent. Thereafter, the respondent's parents came to Pondicherry with other relatives and took her from the petitioner's home to their house at Cuddalore.

3.It is the further case of the petitioner that thereafter he filed petition seeking to annul the marriage solemnized on 28.09.2006 at Pondicherry in M.O.P.No.87 of 2009 before the Family Court, Pondicherry. After adjudication, the



said petition was allowed on 18.04.2017 and the marriage between the petitioner and respondent was annulled.

4.It is the further case of the petitioner that the respondent had filed M.C.No.56 of 2009 before the Family Court, Pondicherry, seeking a sum of Rs.12,000/- per month towards maintenance and the Family Court, Pondicherry, vide order dated 18.04.2017, awarded a sum of Rs.6,000/- per month towards maintenance. Aggrieved by the same, the petitioner has filed this revision.

5.The learned counsel appearing for the petitioner would submit that the Family Court, Pondicherry, heard both M.O.P.No.87 of 2009 filed by the petitioner and M.C.No.56 of 2009 filed by the respondent together, however, passed separate orders on 18.04.2017. He would further submit that once the trial Court has declared the marriage solemnized between the petitioner and respondent as null and void, the respondent loses the status of wife. Hence, the respondent is not entitled for maintenance and the order dated 18.04.2017 passed in M.C.No.56 of 2009 by the Family Court, Pondicherry, is not sustainable one.

6.In support of his contention, the learned counsel appearing for the petitioner relied upon the decision of the Hon'ble Apex Court reported in 1998 AIR 644 (Smt.Yamunabai Anantrao Adhav A vs Ranantrao Shivram Adhav And another), the relevant portion of which reads as follows:

"8.We therefore, hold that the marriage of a woman in accordance with the Hindu rites with a man having a living spouse is a complete nullity in the eye of law and she is not entitled to the benefit of s. 125 of the Code. The appeal is accordingly dismissed. There will be no order as to costs. During the pendency of the appeal in this Court some money was paid to the appellant in pursuance of an interim order. The respondent shall not be permitted to claim for its refund."

7.The learned counsel appearing for the respondent would submit that till the marriage was declared as null and void, the marriage was in existence and the respondent is coming under the definition of wife. Hence she is entitled for alimony, which is one time settlement, as per Section 25 of the Hindu Marriage Act.

8.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent.

9.The facts in the case is not disputed. Admittedly, the marriage between the petitioner and the respondent was solemnized on 28.09.2006 at Pondicherry as per the Hindu Rites and Customs. The said marriage was an arranged marriage. After marriage, the



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petitioner came to know that the respondent was suffering from mental illness. The respondent had not consummated due to the impotent, strange and bizzare conduct, erratic behaviour of her during the nuptial night. Thereafter, the same was informed to the respondent's father and the respondent's parents came to Pondicherry with other relatives and took her from the petitioner's home to their house at Cuddalore.

10. Thereafter the petitioner filed petition seeking to annul the marriage solemnized on 28.09.2006 at Pondicherry in M.O.P.No.87 of 2009 before the Family Court, Pondicherry. After adjudication, the said petition was allowed on 18.04.2017 and the marriage between the petitioner and respondent was annulled.

11. For better appreciation, the relevant portion of Section 125 of Cr.P.C. is extracted hereunder:

"125. Order for maintenance of wives, children and parents, (1) If any person having sufficient means neglects or refuses to maintain— (a) his wife, unable to maintain herself, or (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or (d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means"

12. In the present case, once the marriage was declared as null and void, the respondent loses the status of wife and she is not entitled for maintenance as per Section 125 of Cr.P.C. The decision referred by the learned counsel appearing for the petitioner is squarely applicable to the present case on hand.



13.Further, in the decision of the Hon'ble Apex Court reported in 1991 (2) SCC 375 (K.Vimala Vs. K.Veerawamy), it has been observed that the term "wife" in Section 125 of the Code of Criminal Procedure includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term 'wife' consistent with the objective.

14.However, in the present case, the Family Court, Pondicherry, has granted maintenance to the respondent ignoring the fact that the marriage between the petitioner and the respondent was annulled on the ground of mental incapability, which is not sustainable. Hence, I have no hesitation to set aside the order dated 18.04.2017 passed in M.C.No.56 of 2009 by the Family Court, Pondicherry.

15.Though the respondent claim that till the marriage was declared as null and void, the marriage was in existence and the respondent is coming under the definition of wife and she is entitled for alimony, which is one time settlement, as per Section 25 of the Hindu Marriage Act, the present case on hand relates to Section 125 of Cr.P.C. and the respondent has to file appropriate petition under Section 25 of the Hindu Marriage Act for her claim.

16.This revision is accordingly allowed and the order dated 18.04.2017 passed in M.C.No.56 of 2009 by the Family Court, Pondicherry, is hereby set aside. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

1.The Family Court,
Pondicherry.

+1cc to Mr.S.M.Muralidharan, Advocate SR.No.37676
+1cc to M/s.K.Govi Ganesan, Advocate SR.No.38205

Cr1.R.C.No.867 of 2017
And
Cr1.M.P.No.8079 of 2017

SR-II(CO)
RVM(27/08/2021)