

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1113 of 2018
and
Crl.M.P.No.13038 of 2018

Kumar ... Petitioner

Vs.

1.Rekha

2.Minor.Mervin rep.by his
Natural guardian mother 1st respondent ... Respondent

Prayer: Petition filed under Sections 397 and 401 of Cr.P.C., to set aside the order passed in M.C.No.11 of 2016 on the file of II nd Judicial Magistrate Court at Ponneri dated 30.08.2017.

For petitioner : Mr.D.Padmanadhan

For Respondents : Mr.J.Suresh

ORDER

The petitioner has filed this petition to set aside the order made in M.C.No.11 of 2016 on the file of II nd Judicial Magistrate Court at Ponneri dated 30.08.2017.

2. The case of the prosecution is that marriage between the petitioner

and the respondent was solemnized on 09.07.2010 in the presence of friends and relatives. Due to wedlock, a male child was born on 10.01.2012. Ever since from the date of marriage, the 1st respondent was residing in the petitioner's house at Athipedu Village. On an earlier occasion, the petitioner was married to one Mrs. Prema and by stating that he had legally separated from her and by inducing the 1st respondent for married, the petitioner married the 1st respondent. Thereafter, the petitioner had reconciled with his first wife and wantonly picked up quarrels with the 1st respondent and therefore, they got separated. Further, the 1st respondent without any financial assistance, was struggling to live with the child and thereby filed M.C.No.11 of 2016, before the Lower Court, claiming a sum of Rs.10,000/- as maintenance. The Lower Court, recording the reasons that as the 1st wife is still alive, the 1st respondent who is the second wife was not entitled for any maintenance, has dismissed the petitioner with regard to the 1st respondent was concerned and allowed with regard to the 2nd petitioner by directing the respondent to pay a monthly maintenance of Rs.5,000/- to the minor child. Challenging the said award amount, the present petition is filed by the petitioner.

3. The learned counsel appearing for the petitioner submitted that the 1st respondent has filed a Suit for permanent injunction against the petitioner herein on the file of the District Munsif Court, Ponneri, in O.S.No.220/14 for the petitioner's joint family properties at Azhinjivakkam, Chennai and the said suit also got decreed in favour of the 1st respondent and therefore, the 1st respondent is receiving and enjoying money from the petitioner through his properties, which reveals that the petitioner is always maintaining his 2nd wife and son and further, the petitioner is doing manual labour job, and he has to maintain his 1st wife family and their children also. Further the 1st respondent claims that she is the second wife of the petitioner, however, the same was not established before the Trial Court, for which, the Trial Court negated the claim made by the 1st respondent. Since the marriage of the petitioner and the 1st respondent was not even established before the Trial Court, awarding maintenance amount in favour of the minor child is not sustainable and hence prays for allowing of this petition.

4. The learned counsel appearing for the respondents submitted that

though several attempts were made by the 1st respondent and the elder member of the family, the petitioner had not chosen to cohabit with her and the 1st respondent without any source of income, struggling to maintain the child. Since the petitioner is having agricultural land in his village and also having a own truck and earning nearly Rs.30,000/- per month, he is having capacity to pay a sum of Rs.5,000/- to the 2nd petitioner, as ordered by the Trial Court and prays for dismissal of this petition.

5. This Court has carefully considered the rival submissions and also perused the materials placed on record.

6. The facts in the present case is not in dispute. The marriage between the petitioner and the 1st respondent was solemnized on 09.07.2010. Though it is the claim of the 1st respondent that the petitioner suppressing the earlier marriage, had married the 1st respondent, the said point was elaborately discussed by the Trial Court and based on the evidence adduced, had reached a conclusion that both the petitioner and the 1st respondent admitted that they married when the 1st wife of petitioner is alive and the 1st respondent herself admitted in the evidence that she married

the petitioner with knowledge that his 1st wife was alive and thereby, the Trial Court had dismissed the maintenance petition insofar as the 1st respondent is concerned, as the 1st wife is still alive. With regard to the 2nd respondent, the Trial Court held that even though the said child was born out of second marriage, it is settled law that illegitimate child is also entitled for the estate of his father and thereby allowed the petition insofar as 2nd petitioner is concerned and awarded maintenance amount of Rs.5,000/- to the minor child and the petitioner also not denied the marriage, by way of any documentary evidence. In such situation, when the Trial Court elaborately discussed the matter and arrived at a conclusion, this Court is not inclined to interfere with the reasons assigned by the Trial Court, as there is no error apparent on the face of the record and hence, considering the present cost of living, the order granting maintenance amount of Rs.5,000/- to the 2nd respondent, is just and reasonable.

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M.DHANDAPANI,J.

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7. Accordingly, this Criminal Revision Petition is dismissed.

Consequently connected miscellaneous petition is closed.

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No



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