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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.09.2021

Pronounced on : 26.11.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C. (MD) .No.29 of 2018

Ganapathiraman @ Ganesan : Petitioner

Vs.

Suganthi : Respondent

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records in M.C.No.30 of 2016, dated 26.09.2017 on the file of the Family Court, Srivilliputhur, Virudhunagar District and set aside the same.

For Petitioner : Mr.V.Kathirvelu, Senior Counsel,
for Mr.K.Prabhu.

For Respondent : Mr.R.Gandhi.

ORDER

The Criminal Revision Case is directed against the order passed in M.C.No.30 of 2016, dated 26.09.2017 on the file of the Family Court, Srivilliputhur, Virudhunagar District.

2.The respondent by invoking Section 125 of Cr.P.C, has filed the case in M.C.No.3 of 2016 before the Family Court, Srivilliputhur, Virudhunagar District, claiming maintenance at Rs.50,000/- per month. The revision petitioner has filed counter statement, disputing the marriage alleged by the respondent and the liability to pay the maintenance. The learned Judge, Family Court, upon considering the evidence and on hearing the arguments of both sides, has passed the impugned order on 26.09.2017, directing the revision petitioner to pay monthly maintenance of Rs.20,000/- from the date of petition. Aggrieved by the said order, the husband has come forward with the present revision.

3. Whether the impugned order passed in M.C.No.30 of 2016, dated 26.09.2017 on the file of the Family Court, Srivilliputhur, Virudhunagar District is liable to be set aside ? is the point of consideration.

4.The case of the respondent/wife is that the marriage between herself and the petitioner was solemnized on 23.05.2010 at Sankarankovil, that prior to the marriage, the respondent was a



divorcee, having a female child and the petitioner was a widower, having a male child, that both of them after knowing the family background of each other, had entered into re-marriage and that the respondent and the petitioner were living together along with their children.

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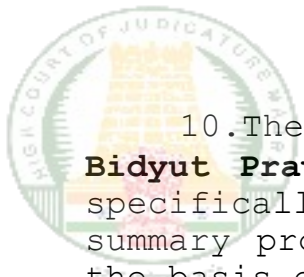
5.It is the further case of the respondent that the petitioner subsequently demanded dowry and ill-treated the respondent and her daughter, that the petitioner forced the respondent to abort her pregnancy, that the petitioner had also snatched the jewels of the respondent and treated as servant and that since the petitioner had threatened the respondent that he would kill her and her child, if she refused to leave the house of the petitioner, the petitioner was forced to leave the matrimonial house on 13.06.2010.

6.It is the further case of the respondent that the respondent and her female child are presently living in her parent's house at Natchiarpatti, that the complaints to the Police against the petitioner were of no avail, that the respondent is not having any income to look after herself and her female child and that therefore, she was constrained to file the above maintenance claim.

7.As already pointed out, the petitioner has filed the counter statement, disputing the facts that the marriage between him and the respondent was solemnized on 23.05.2010 and that they were living together as husband and wife. The petitioner has also denied the dowry harassment and ill-treatment alleged by the respondent.

8.The respondent in her claim petition has specifically stated that she was married to one Rajaram of Chettiappatti, Dindigul, that due to their wedlock, a female child by name Sivasankari was born to them, that since misunderstanding arose between them, divorce petition in HMOP.No.118 of 2019 was filed before the Sub Court, Srivilliputhur and that divorce has already been granted by the Court on 03.11.2009. The petitioner in his counter statement has stated that he was not aware of the earlier marriage and consequent divorce alleged by the respondent.

9.The learned counsel for the petitioner would submit that the respondent has not produced any evidence to show that she was divorced from her first husband. As rightly contended by the learned counsel for the respondent, it is not the case of the petitioner that though the marriage was solemnized between himself and the respondent, the said marriage is not valid because of the subsistence of the first marriage of the respondent. Since the petitioner has specifically disputed the marriage alleged to have been taken place between himself and the respondent, the present contention of the petitioner that the respondent has not proved that she was divorced from her first husband, loses its significance.



10.The Hon'ble Supreme Court in **Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit and another** reported in (1999) 7 SCC 675, has specifically held that validity of the marriage for the purpose of summary proceeding under Section 125 Cr.P.C is to be determined on the basis of the evidence brought on record by the parties.

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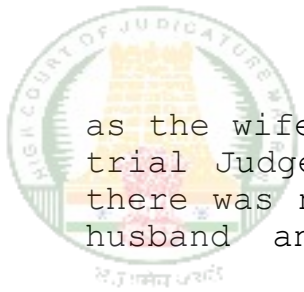
11.It is settled law that in the proceedings under Section 125 Cr.P.C, if the wife succeeds in showing that she and the petitioner have lived together as husband and wife, the Court can presume that they are legally wedded spouse and in that situation, the party, who denies the marital status can rebut the presumption. In the words of the Hon'ble Supreme Court, the very purpose of Section 125 Cr.P.C is to achieve 'social justice', which is enshrined in the preamble of the Constitution of India.

12.In the case on hand, the respondent has examined herself and produced 10 documents as Ex.P.1 to Ex.P.10. The respondent has produced the marriage invitation, photos and the identity card issued to her daughter and the identity card issued to the guardian of the child by the school authorities and copies of two sale deeds, apart from the copy of legal notice sent by the respondent to the petitioner.

13.It is pertinent to mention that Ex.P.6 to Ex.P.10 were marked only through the petitioner (R.W.1) during cross examination. It is evident from the deposition of R.W.1 that photographs Ex.P.7 to Ex.P.9 were shown to him and since he has admitted the same, they were exhibited as Ex.P.7 to Ex.P.9. If that be so, this Court is at loss to understand as to how the learned trial Judge has recorded that Ex.P.7 to Ex.P.9 were marked with objections. Since the witness has admitted the documents in cross examination, the question of raising any objections nor marking the documents subject to the objections of the other side does not arise at all. In Ex.P.3 which is the identity card issued to the daughter of P.W.1, the petitioner's name finds place as father of S.Sivasankari, the daughter of the respondent.

14.In the counter statement, the petitioner has taken a stand that the respondent was engaged as a servant to look after his male child and that the respondent was permitted to live in his house along with her female child. As rightly observed by the learned trial Judge, when there was no marriage with the respondent, then the petitioner should not have allowed the daughter of the respondent to wear identity card with the name of the petitioner as the father of that girl.

15.The petitioner has also produced a sale deed, dated 12.12.2011 (Ex.P.10), executed in favour of the petitioner by one Vasanthiammal, wherein it is clearly evident that the respondent has signed as attester of the said sale deed and she described herself



as the wife of the petitioner. As rightly pointed out by the learned trial Judge, if the respondent was only engaged as a servant, then there was no chance for her to mention the petitioner's name as her husband and that too, in the presence of the petitioner.

16. It is pertinent to mention that the petitioner has specifically admitted that the respondent along with her female child was residing in his house. The petitioner has also produced a copy of the sale deed, dated 16.07.2010 (Ex.P.5) executed in favour of her female child Sivasankari, represented by her mother and guardian, the respondent herein and whereunder, admittedly, the petitioner has signed as attestor of the said document and in addition to that, he had only identified the parties before the Sub-Registrar. It is pertinent to mention that in Ex.P.5 sale deed also, the respondent has shown her husband name as Ganapathiraman, the petitioner herein.

17. It is not in dispute that the respondent has sent a legal notice to the petitioner, dated 19.09.2016 under Ex.P.6 and that the same was received by the petitioner. Admittedly, the petitioner has not sent any reply to the said notice. As rightly contended by the learned counsel for the respondent, the respondent has specifically stated about their marriage and their living together as husband and wife and subsequent dowry harassment and consequent ill-treatment, meted out to the respondent and her female child by the petitioner. Despite the receipt of the said legal notice, the petitioner in his cross examination would admit that he had not sent any reply to the said notice and he has also not offered any explanation for not sending any reply.

18. On considering the evidence of both the parties and the admissions made by the petitioner and also the documentary evidence adduced by the petitioner, this Court is of the view that the respondent has shown *prima facie* case, that there existed marital relationship between them and that they had been living as husband and wife together. At this juncture, it is necessary to refer sub Section 2 of Section 127 of Cr.P.C.

“(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.”

19. No doubt, it is settled law that any decision of the competent Civil Court in respect of the marital status of the parties is binding on the Court, which passed orders under Section 125 Cr.P.C granting maintenance. In the case on hand, admittedly, the petitioner has not approached the competent Civil Court to declare that the respondent is not his wife and there was no marriage at all between them. But in case, if he approaches the



Civil Court and gets a decree in his favour, then he is at liberty to approach the Family Court under Section 127(2) of Cr.P.C for cancelling the maintenance order. But as of now, as rightly observed by the learned trial Judge, the respondent has *prima facie* established her status that she is the wife of the petitioner.

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20. It is not in dispute that the petitioner and the respondent are living separately. The respondent has specifically stated that she is still willing to live with the petitioner. As rightly contended by the learned counsel for the respondent, considering the defence taken by the petitioner, one can easily infer that the petitioner alone has neglected the respondent and is refusing to live with her.

21. Admittedly, the petitioner has not produced any material or evidence to show that the respondent is employed and is earning a good income sufficient enough to take care of herself and her female child. As rightly observed by the learned trial Judge, nothing was brought on record that the respondent is able to maintain herself and that the petitioner being the husband, is liable to pay maintenance to the respondent.

22. Now turning to the quantum of maintenance amount, as already pointed out, the respondent has claimed monthly maintenance at Rs.50,000/-. The case of the respondent is that the petitioner is running a rice mill in Tirunelveli and is getting income of Rs.10,000/- per day, that the petitioner is also doing money lending business and get income of Rs.1,00,000/- per month and that the petitioner is possessing properties worth about 5 crores.

23. Admittedly, the petitioner is running a rice mill. As rightly pointed out by the learned counsel for the respondent, the petitioner in his cross examination would admit that he is getting daily income at Rs.1,000/- in his rice mill business. Admittedly, the petitioner has not produced any records to show the actual income from his rice mill. He has also not produced the income-tax returns or other records to dispute the claim of the respondent. The learned trial Judge, taking note of the fact that petitioner is also duty bound to maintain his son, awarded a sum of Rs.20,000/- to the respondent.

24. Considering the facts and circumstances of the case and also the status of the parties and the present economic scenario, the fixation of monthly maintenance at Rs.20,000/- to the respondent by the learned trial Judge cannot be found fault with and the same is very much reasonable and cannot be said to be excessive. Hence, this Court concludes that the revision petition is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.



25. In the result, the Criminal Revision is dismissed. The parties are directed to bear their own costs.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Judge,
Family Court, Srivilliputhur,
Virudhunagar District

2. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-36370[F] dated 29/11/2021)

+1 CC to M/s.R.GANDHI, Advocate (SR-36383[F] dated 29/11/2021)

CRL.R.C.(MD).No.29 of 2018

Dated :26.11.2021

MGJ(09.12.2021) 6P 6C