



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WEB COPY

Cr1.OP(MD)No.15631 of 2017

and

Cr1.MP.(MD)Nos.10406 of 2017 & 623 of 2019

V.Chandra Kumar : Petitioner/Petitioner/Respondent

Vs.

V.Vijayarani : Respondent/Respondent/ Petitioner

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to call for the records in Cr1.R.C.No.19 of 2016 dated 22.09.2017 on the file of the learned IV Additional District and Sessions Judge, Madurai, confirming the order passed by the learned Additional Chief Judicial Magistrate, Madurai in M.C.No.19 of 2015 dated 06.04.2016 and set aside the same.

For Petitioner : Mr.M.Anbalagan

For Respondent : Mr.C.Srinivasa Raghavan

ORDER

This petition is filed by the petitioner as against the order passed by the learned IV Additional District and Sessions Judge, Madurai, in Cr1.R.C.No.19 of 2016 dated 22.09.2017, confirming the order passed by the learned Additional Chief Judicial Magistrate, Madurai in M.C.No.19 of 2015 dated 06.04.2016.

2. The respondent has filed a petition under Section 125 Cr.P.C stating that she married the petitioner at Chennai and lived as husband and wife. Later, due to some misunderstanding, they are living separately and therefore, she has filed the maintenance application. The said maintenance application was allowed by the learned Additional Chief Judicial Magistrate by order dated 06.04.2016 in M.C.No.19 of 2015, awarding a maintenance of Rs.10,000/- per month to the respondent. As against the order of maintenance, the petitioner has preferred a revision petition before the District Court, Madurai and the same was dismissed by the learned IV Additional District and Sessions Judge, Madurai, in Cr1.R.C.No.19 of 2016 dated 22.09.2017.

3. In the meantime, the petitioner has filed a petition for declaring the marriage said to have taken place between the petitioner and the respondent on 22.02.2013 as null and void in SMOP.No.1 of 2017 before the Family Court, Madurai. The respondent



has also filed a petition for restitution of conjugal rights as against the petitioner in HMOP.No.576 of 2018. The Family Court, by common order dated 18.01.2019, allowed the petition filed by the petitioner in SMOP.No.1 of 2017 by declaring the marriage said to have taken place between the petitioner and the respondent on 22.02.2013 as null and void and dismissed the petition filed by the respondent for conjugal rights in HMOP.No.576 of 2018.

4. Mr.M.Anbalagan, learned Counsel for the petitioner submitted that it is an admitted case of the respondent that she was married to one Sekar and thereafter, married to one Vanakkam in the year 2003. Both the marriages are said to have been dissolved due to misunderstanding between the parties and after that, the marriage between the petitioner and the respondent was performed in the year 2013. Though it is claimed so, there is no material to show that the first marriage of the respondent with the said Sekar was dissolved by the competent Court in the manner known to law. Taking into consideration of the same, the Family Court, Madurai, has declared the marriage between the petitioner and the respondent as null and void. When the marriage itself was declared as null and void, the question of maintenance would not arise at all. He further submitted that the respondent is, in fact, getting maintenance amount of Rs.2,000/- from the said Vanakkam, the second husband, pursuant to the orders of the Court.

5. Mr.C.Srinivasa Raghavan, learned Counsel for the respondent submitted that though the Family Court has declared the marriage as null and void, as against the order of the Family Court dated 18.01.2019, the respondent has preferred appeals before this Court in CMA(MD)Nos.876 & 877 of 2019 and the same are pending consideration. However, he admitted that there is no interim orders in the said appeals. The learned Counsel has denied the factum that the respondent is receiving any maintenance from her second husband, Vanakkam. However, he admitted that in the application filed for divorce for the second marriage, there was an arrangement for paying maintenance amount to the respondent by the said Vanakkam, but, according to the learned Counsel, it was not paid by the Vanakkam.

6. This Court has paid it's anxious consideration to the rival submissions.

7. The respondent has filed an application under Section 125 Cr.P.C claiming that she is the legally wedded wife of the petitioner.

Section 125 Cr.P.C reads as follows:

"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



....
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:

....

Explanation—For the purposes of this Chapter—

....

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

8. As per this provision, a wife is entitled for maintenance as against the husband. The Courts below have considered that the respondent is the legally wedded wife of the petitioner and have ordered for maintenance. However, on the subsequent application filed by the petitioner in SMOP.No.1 of 2017, the Family Court, Madurai, has declared the marriage between the petitioner and the respondent as null and void. Therefore, the respondent cannot claim the status of a wife, as such, she is not entitled for any maintenance from the petitioner. Though the respondent has preferred an appeal before this Court, the same is pending without any interim order.

9. In view of the subsequent development, the order passed by the learned IV Additional District and Sessions Judge, Madurai, in Crl.R.C.No.19 of 2016 dated 22.09.2017 and the order passed by the learned Additional Chief Judicial Magistrate, Madurai in M.C.No.19 of 2015 dated 06.04.2016 are set aside. However, the respondent is at liberty to file an application for maintenance, if she succeeds in the appeal pending before this Court.

10. In the result, this criminal original petition stands allowed. Consequently, connected miscellaneous petitions stand closed.

Sd/-

Assistant Registrar (CSIII)

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Sub Assistant Registrar(CS)

gk



To

1.The IV Additional District and Sessions Judge,
Madurai.

2.The Additional Chief Judicial Magistrate,
Madurai.

Cr1.OP(MD)No.15631 of 2017
09.07.2021

NS (CO)
KB (03.08.2021) 4P 3C