



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.04.2021

PRONOUNCED ON : 29.07.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.R.C. (MD) No.535 of 2017

WEB COPY

Mary Geetha Jayanthi

: Petitioner

Vs.

Panneer Selvam

: Respondent

PRAYER: Criminal Revision Petition filed under Section 397 Cr.P.C. r/w. Section 401 of Criminal Procedure Code, to set aside the order passed in M.C.No.6 of 2009 on the file of the Judicial Magistrate, Eraniel, dated 27.03.2017.

For Petitioner : Mr.P.Thirumahilmaran

For Respondent : Mr.C.K.M.Appaji

ORDER

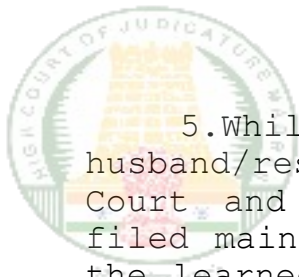
This Revision Petition is filed as against the order of dismissal by the learned Judicial Magistrate, Eraniel, in M.C.No.6 of 2009, dated 27.03.2017. The Revision Petitioner is the petitioner/wife in M.C.No.6 of 2009.

2.Heard Mr.Thirumahilmaran, leaned Counsel for the Revision Petitioner and Mr.C.K.M.Appaji, learned Counsel for the respondent.

3.The petitioner is the wife and the respondent is her second husband and the brother of the petitioner's first husband. After the death of the petitioner's first husband, who was missing in the sea during his fishing avocation and was presumed to be dead, the elders of both the families had insisted the petitioner and her children to have protection from the respondent, who is none other than her brother in-law. As per the petition, they had been married. The respondent/husband accepts the marriage, but, claims that there had not been cohabitation between them, as wife and husband in the true sense of the term. Thus, the marriage had not been consummated.

4.The petitioner had undergone sterilisation and she claims to have received widow pension on the ground that her husband died. She had been in a job and earning more than Rs.5,000/- per month. As proof of the same, the husband/respondent had marked Ex-B2, as document. Whereas, the husband was not having any permanent income. If he had been to Saudi Arabia, he could have earned, but, he left his job and returned to India on hearing the death of his brother, the first husband of the petitioner. Thereafter, he did not go to

Saudi Arabia



5.While so, divorce O.P. had been filed by the husband/respondent herein against the petitioner before the District Court and he obtained divorce. Thereafter, the petitioner/wife filed maintenance petition in M.C.No.6 of 2009 before the Court of the learned Judicial Magistrate, Eraniel. Considering the facts and circumstances of the case, the learned Judicial Magistrate, Eraniel, had dismissed the petition filed by the wife, by order, dated 27.03.2017. As against the same, the wife had filed the present revision.

6.The learned Counsel for the petitioner relied upon the following reported Rulings in support of his submissions:

- (1) 2011 (2) DMC 746 (R.Mala and another vs. Santhanalakshmi)
(2) 2013 (4) CTC 90 (Aysha vs Ozir Hassan)

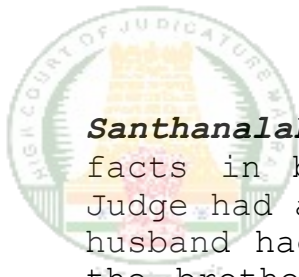
The point for consideration:

7.Whether the revision petition is to be allowed and the order passed by the learned Judicial Magistrate, Eraniel, in M.C.No.6 of 2009, dated 27.03.2017 is to be set aside?

8.The case of the petitioner herein is peculiar from the case of the reported Rulings relied upon by the learned Counsel for the Revision Petitioner. The respondent/husband had obtained decree of divorce. The petitioner is having income. Whereas, respondent after getting divorce married another woman and earning his livelihood as a fisherman. The petitioner is better placed than the respondent. Therefore, the reason for dismissing the maintenance petition by the learned Judicial Magistrate is not found perverse. The reason of the learned Judicial Magistrate is acceptable and reasonable. Only when there is perverse finding by the Trial Court, the Revisional Court can exercise the power by interfering with the order. The order of the learned Trial Judge is based on the evidence available before him or her. The petitioner had not furnished any proof of records and evidence regarding income, whereas, the respondent had furnished proof of income of the petitioner.

9.Not only that, in the counter affidavit filed by the respondent/husband, he had stated that the petitioner is in receipt of widow pension of Rs.500/- per month for the death of her first husband. When that be the case and the reason that the petitioner had stated in the petition that she is not intending to initiate any action for Bigamy against the respondent, gives a presumption to the Court that she accepts the facts that the respondent had divorced her on filing appropriate petition before the District Court, Nagercoil and obtained a decree of divorce. Under those circumstances, there is no ground for interference.

10.Mr.P.Thirumahilmaran, learned Counsel for the petitioner placed reliance on (1) 2011 (2) DMC 746 (R.Mala and another vs. <https://hcservices.ecourts.gov.in/hcservices/>)



Santhanalakshmi) (2) 2013 (4) CTC 90 (Aysha vs Ozir Hassan). The facts in both cases are different. In those cases, the learned Judge had accepted the fact of husband and wife relationship and the husband had the income. Here, it is not the case. The husband is the brother of the first husband, who is alleged to have died by drowning in the sea during his fishing avocation. Later on, they were married on the advice of the elders. But, there had not been consummation, as husband and wife, as per the meaning of terms "husband and wife". Therefore, the husband/respondent herein approached the District Court and obtained decree of divorce against the wife/petitioner.

11.After the decree of divorce, he had married another woman with his meagre income as a Fisherman, which fluctuates depending on the weather condition. When there is cyclone or threat of Tsunami or heavy rain, the Government advises the fishermen not to venture into sea. Those times, the fishermen lose their livelihood. Likewise, from the period of May 1 to May 30, for breeding season of the fish in the sea, the fishermen are barred from fishing in the Bay of Bengal and from the month of April, the fishermen at Kanyakumari, who go fishing at Arabian sea, are barred from entering the Arabian sea. Therefore, their livelihood depends on many condition, which fluctuates. Therefore, there is no guarantee for regular income, as the petitioner claims herein.

12.The contention raised by the respondent/husband in the counter affidavit and the evidence of the respondent/husband was accepted by the learned Trial Judge and therefore, that petition was dismissed. The finding of the learned Judicial Magistrate, Eraniel dismissing the petition is not on perverse finding. It is based on strong reasoning. The petitioner appears to have better been placed than the respondent. The Revision Petition has no merits and hence it is dismissed. The point for consideration is answered in favour of the respondent and against the petitioner.

13.In the result, this Revision Petition is dismissed and the order of the learned Judicial Magistrate, Eraniel in M.C.No.6 of 2009, dated 27.03.2017, is confirmed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

cmr



To

1.The Judicial Magistrate, Eraniel.

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

+1 CC to M/s.P.THIRUMAHILMARAN, Advocate (SR-25010[F] dated
02/08/2021)

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RD(9.08.2021) 4P 5C