



Crl.R.C.(MD).No.518 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 29.11.2022

Delivered On: 22.12.2022

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

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Arputha Mary

... Petitioner

Vs.

Sathiyamurthy

... Respondent

PRAYER: This Criminal Revision Case is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records and set aside the judgment passed by the learned Family Judge, Sivagangai in M.C.No.31 of 2018, dated 19.10.2019.

For Petitioner : Mr.G.Karuppasamy Pandiyan

For Respondent : No Appearance

ORDER

This Revision petition has been filed challenging the judgment passed by the learned Judge, Family Court, Sivagangai, in M.C.No.31 of 2018, dated 19.10.2019.



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2.The facts in brief:

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The revision petitioner filed a petition under Section 125 Cr.P.C. before the Family Court, Sivagangai, with the following allegations. It was a love marriage between the revision petitioner and the respondent and the marriage was performed in 1986 in Veerama Kaliamman temple, Sivagangai. After their marriage, they were living in Paramakudi for some time and in other areas. Because of the above said marriage a male child by name Sathish was born. Without the knowledge of the wife, the husband admitted the above said Sathish in a private school. After completing 12th standard, Sathish returned to the petitioner. After his marriage he also separated from the petitioner.

2.During the matrimonial life, the husband was having illegal intimacy with one Upakara Mary. When that was condemned, he separated from the petitioner and started living with the above said lady for more than 20 years. Steps have been taken by her to resume the matrimonial life, but, it failed. For long time she sustained herself with the meagre income. Now because of the advanced aged stage, she is suffering with several ailments. The husband was working as a Conductor in the Tamil Nadu State Transport Corporation and now, he is a Ticket Checker and earning more than Rs.



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60,000/-. Apart from that he is also owning income yielding properties.

Claiming maintenance amount of Rs.20,000/-, she has filed this petition.

3. That petition was resisted by the respondent stating that at one point of time, both were in love. But, later when he demanded marriage, the petitioner refused stating that he belongs to lower caste. Because of the above said refusal, he married one Upakara Mary, on 05.01.1987. During the above said time, the petitioner tried to resume the relationship. But, that was rejected. Since they are having no child, his maternal aunt by name Athirian Mary informed him that a male child was in the Orphanage, which can be adopted by him. They also adopted the child and brought him educated in several Schools. Later, some issue arose between the above said aunt and himself. Therefore, she poisoned the mind of the above said Sathish stating that he and his wife are not his real parents. Later, the above said Sathish started living with the petitioner. In the meantime, he also begot two children.

4. Before the trial Court, on the side of the revision petitioner, two witnesses have been examined and four documents have been marked and on the side of the respondent, three witnesses have been examined and one



document has been produced. On the side of the revision petitioner, to prove the above said marriage and joint living, one Athiriyam Mary was examined as PW2. After considering the documentary and oral evidences, the trial Court found that the marriage between the petitioner and the respondent was not proved and the relationship as husband and wife is also not proved. So, that petition was dismissed. Challenging the above said, this revision petition has been preferred by the petitioner.

5.The learned counsel for the petitioner would specifically rely upon the judgment of the Honourable Supreme Court in the case of ***Kamala and others Vs. M.R.Mohankumar***, reported in ***2019-1-L.W. (Crl.) 434*** and would submit that while considering the maintenance petition under Section 125 Cr.P.C., strict Rules of evidence with regard to the marriage should not be undertaken. There is a presumption available with regard to the marital relationship due to long cohabitation. According to him, the trial Court has approached the case in improper manner expecting strict proof through documentary evidence.

6.No doubt that long cohabitation between matured man and woman can lead to an inference that they were married. But the presumption has



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always rebuttable one that can be rebutted by the other party through valid evidence.

7.Now coming to the facts of this case, it is seen that it is the case of the revision petitioner that the marriage took place in the year 1987 and thereafter, child was also born. The above said child was taken by the respondent without her knowledge. But, she remained silent for about 30 years without even claiming any right of maintenance. Because it has been stated by her to the effect that the respondent started living with Upakara Mary for about 20 years. It appears that no steps have been taken by her either for the cohabitation or for taking action against the respondent for the illegal act. She remains silent for several decades till the filing of the petition.

8.She even went to the extend to state that the above said Sathish came to her after separating from the respondent after coming to know about the truth. But even then she has not chosen to examine the above said Sathish on her side.



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9.As mentioned above, the respondent would say that originally they loved with each other and marriage proposal was refused by the petitioner on the ground of communal issue. Interestingly, the respondent's own aunt namely Athirian Mary has come in support of the revision petitioner. She has stated that the marriage between the revision petitioner and the respondent took place in the year 1986 and through the above said marriage the above said Sathish was born, the respondent separated from the revision petitioner and started living with another lady. Now, this evidence has been relied by the petitioner that her evidence is sufficient to prove their marriage. She would say that all of them belonged to Christian religion. But the petitioner submitted that the marriage between them took place in a temple at Sivagangai. She also did not attend their marriage. She has also denied that the above said Sathish was adopted by the respondent. The Birth Certificate of the above said Sathish is available, wherein, it is found that the Date of Birth is shown as 18.09.1987. The birth was registered on 20.09.1987. The father's name is mentioned as Sathiyamurthy and mother's name is Arputha Mary and that document also standing against the respondent's case. In the light of the above said Birth Certificate, now let us go to the evidence of the respondent. He would say that since the revision petitioner refused the marriage proposal, he married one Upakara Mary on



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05.01.1987. Another Birth Certificate has been produced by the respondent, which is marked as Ex.R1, wherein, we find that one Sathish was born on 05.06.1989 between Sathiyamurthy and Upakara Mary and the permanent address is shown as Sooranam, Ilayankudi Taluk, Sivagangai District. According to him, the above said Sathish is an adopted child and if it is really so, the Birth Certificate, issued by the Sivagangai Municipality would have been a fake one. But we find that the date of registration as 20.09.1987. So that document cannot be disputed as fake one. Whether it is true or not, the case of the respondent simply disowned the knowledge about the above said entries. So from the evidence of PW2, we can safely conclude that the respondent married the revision petitioner, thereafter, lived together, begotten a child and later started another relationship with one Upakara Mary. We need not go into other aspects with regard to the other issue whether the respondent married the above Upakara Mary.

10. Against the above said evidence of PW2, the respondent has projected the oral evidence of RW2 and who is stated to be a brother by relationship. Similarly, he has examined RW3, who is stated to be the relative of the respondent. He has also supported the case of the respondent. But the question which arises for consideration is whether in the



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light of the above said documentary evidence of the Birth Certificate, which was registered in 1987 itself, the oral evidence of these people can be relied.

The evidence may lie, but, not the documents and circumstances. Here, the circumstances are against the case of the respondent and also the documentary evidence. The only remaining point is delay. No doubt, there is long delay in approaching the Court by the petitioner. But, delay may not be the proper reason to reject the claim of maintenance. I am of the considered view that considering the above said fact and as well as the age of the parties, fixing Rs.5,000/- as monthly maintenance to the revision petitioner may serve the just amount.

11. Accordingly, this criminal revision petition is allowed and the order passed by the learned Judge, Family Court, Sivagangai, in M.C.No.31 of 2018, dated 19.10.2019 is hereby set aside. The respondent shall pay a sum of Rs.5,000/- to the revision petitioner from the date of filing of the maintenance petition.

22.12.2022

Index : Yes / No
Internet : Yes / No
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To

- 1.The Judge, Family Court, Sivagangai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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