



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2022

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.934 of 2021
and
Crl.M.P(MD)No.11189 of 2021

Karuppaian

... Petitioner

Vs.

Saidhambal

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records relating to the order dated 05.06.2021 made in Cr.R.P.No.02 of 2020 on the file of the learned Principal District and Sessions Judge, Pudukkottai, reversing the order, dated 18.12.2019 made in M.C.No.04 of 2017 on the file of the learned Chief Judicial Magistrate, Pudukkottai and set aside the same.

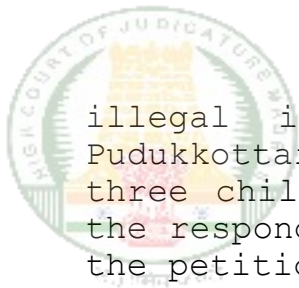
For Petitioner : Mr.R.Anand
for Mr.K.C.Maniyarasu

For Respondent : Mr.K.Baalasundaram

ORDER

This revision has been filed as against the order passed in Cr.R.P.No.02 of 2020 on the file of the learned Principal District and Sessions Judge, Pudukkottai, dated 05.06.2021, thereby reversing the order passed in M.C.No.04 of 2017 on the file of the learned Chief Judicial Magistrate, Pudukkottai, dated 18.12.2019, thereby dismissing the petition seeking for maintenance under Section 125 of Cr.P.C.

2.The respondent/wife filed a petition in M.C.No.4 of 2017 on the file of the learned Chief Judicial Magistrate, Pudukkottai seeking maintenance. The case of the respondent is that in the year 1968, marriage was performed between the petitioner and the respondent at Gandarvakkottai Sivan Temple. Due to their wedlock, they begotten a male child and a female child. The petitioner/husband is a retired teacher in Physical Education Department and after gave birth to two children, the petitioner had



illegal intimacy with one Cauvery and they were living in Pudukkottai. Through the said Cauvery, the petitioner gave birth to three children. The petitioner, being the husband, has to maintain the respondent. Hence, the respondent claimed maintenance as against the petitioner.

WEB COPY

3. On the side of the respondent, four witnesses were examined as P.W.1 to P.W.4 and marked Ex.P.1 to Ex.P.18 and also marked Ex.X.1 to Ex.X.4 through P.W.4 and on the side of the petitioner, two witnesses were examined as D.W.1 and D.W.2 and no documents were marked.

4. The trial Court, based on the oral and documentary evidences, dismissed the petition filed by the respondent seeking maintenance as against the petitioner. Aggrieved by the same, the respondent preferred Cr.R.P.No.02 of 2020 before the learned Principal District and Sessions Judge, Pudukkottai.

5. The first revision Court allowed the revision and ordered maintenance of Rs.10,000/- in favour of the respondent herein payable by the petitioner from the date of the petition filed under Section 125 of Cr.P.C. Aggrieved by the same, the present revision has been filed by the petitioner.

6. The learned counsel appearing for the petitioner would submit that the petitioner is no way connected with the respondent and no marriage was solemnized as alleged by the respondent. He got married with one Cauvery as per the Hindu Rites and Customs on 19.05.1980. In fact, the children of the respondent had filed a partition suit in O.S.No.156 of 2004 on the file of the Principal District Court, Pudukkottai and the same was dismissed for default on 20.12.2006. In the said suit for partition, the petitioner filed a detailed written statement and had taken specific stand that the plaintiffs, namely the children of the respondent herein, were not born through the petitioner and he never got married with the respondent herein. The maintenance case was filed after 15 years from the date of alleged marriage. Therefore, the trial Court rightly dismissed the petition for maintenance on the ground that the respondent failed to prove her marriage and also failed to prove their living relationship. On the other hand, the petitioner proved his case through documentary evidence that one Cauvery is the legally wedded wife. He further submitted that the respondent has taken summon to P.W.4-the Deputy Superintendent of Police, who has registered the F.I.R in Crime No.246 of 2017 for the offences under Sections 294(b), 323, 427 and 506(i) of I.P.C. and SC/ST Act, in which the statement of the petitioner was recorded under Section 161 (3) of Cr.P.C as L.W.4 and the same was marked as Ex.X.4. In the said statement, the petitioner has stated that the respondent is his first wife and he got married with the second wife. On the strength of 161(3) of Cr.P.C., the first revision Court concluded that the petitioner himself admitted that the respondent is the wife and he is duty bound to maintain the

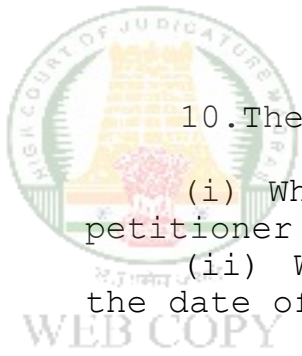


respondent herein. He also relied upon the Judgment of the Honourable Supreme Court of India in Crl.A.No.730 of 2020, dated 04.11.2020 in the case of Rajnesh Vs. Neha and others, in which, the Honourable Supreme Court of India issued several directions with regard to the filing of maintenance petitions. It contained the details about the status and declaration. While the revision was pending, the said Judgment came to be passed and directed the Court below to follow the said directions. Without adhering to the directions issued by the Honourable Supreme Court of India, the first revision Court mechanically allowed the maintenance case filed by the respondent herein.

7.He further submitted that the first revision Court while ordering maintenance of Rs.10,000/- per month payable by the petitioner ordered to be paid from the date of petition filed under Section 125 of Cr.P.C without any reasons. This Court held in the case of P.Anandhi Vs. S.Murali Viswanathan in Crl.R.C(MD)No.745 of 2016, dated 19.03.2018 held that the Magistrate should give some reasons in support of either of the eventualities, for deciding as to the date from which the maintenance amount should be paid with reasons, namely whether from the date of petition or from the date of order. The first revision Court, without stating any reasons, mechanically allowed the petition and ordered to pay maintenance from the date of petition filed for maintenance by the respondent herein.

8.Per contra, the learned counsel appearing for the respondent would submit that in support of the respondent, she examined P.W.1 to P.W.4 and marked Ex.P.1 to Ex.P.18, in which Ex.P.1-smart card contained the name of the petitioner as her husband. The trial Court, without even disclosing those documents, concluded that the respondent failed to prove her marriage with the petitioner. There is absolutely no necessity to prove the factum of marriage in respect of maintenance case and a male and female lived together as husband and wife is enough to claim maintenance. The children were born out of their wedlock and as such, the respondent is entitled for maintenance. Before 50 years of their marriage, there is no possibility for producing the receipt of their marriage invitation. To prove their marriage, the respondent examined P.W.2 and P.W.3. They are their relatives and they corroborated the evidence of the respondent herein. Further, they also produced photographs and thus, it is clear that they got married and gave birth to two children. The first revision Court rightly allowed the maintenance and ordered a sum of Rs.10,000/- as monthly maintenance. Admittedly, the petitioner is a retired Physical Education Teacher and he is drawing pension nearly Rs.60,000/-. Therefore, Rs.10,000/- of monthly maintenance is very meagre.

9.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the



10.The points for consideration are as follows:-

- (i) Whether the respondent proved that she is the wife of the petitioner or not?
- (ii) Whether the respondent is entitled for maintenance from the date of petition or from the date of order?

11.On the side of the respondent, she examined P.W.1 to P.W.4 and marked Ex.P.1 to Ex.P.18. Through P.W.4, Ex.X.1 to Ex.X.4 were marked. On a perusal of Ex.P.1 to P.18 revealed that the ration card, aadhar card, school transfer certificate, community certificate, residential certificate and voter identity card were marked and proved that the petitioner is the husband of the respondent. They gave birth to one female child and male child. In the statement recorded under Section 161(3) of Cr.P.C, which was marked as Ex.X.4, the petitioner stated that she got married the respondent and gave birth to two children. That apart, the son of the respondent filed a suit for partition in O.S.No.156 of 2004 on the file of the Principal District Court, Pudukkottai and it was dismissed for default. This Court can draw inference that while pending the suit they might have entered into settlement by allotting some share in favour of the son. Thereafter, when the son entered into his share of the property, the person, who was appointed by the petitioner objected and in which complaint was lodged and the same was registered, in which the statement of the petitioner was recorded. That is the reason why the respondent filed a maintenance case after 50 years of their marriage. As rightly held by the Court below to claim maintenance, the respondent need not prove the factum of marriage when the male and female were lived together as husband and wife is enough to claim maintenance.

12.The learned counsel appearing for the petitioner would submit that now the petitioner is living with his wife Cauvery along with three children and as such, he is being the pensioner, He could not be able to pay a sum of Rs.10,000/- as monthly maintenance, that too, from the date of petition. Initially, the maintenance case filed by the petitioner was dismissed and the first revision Court allowed the maintenance case and ordered to pay a sum of Rs.10,000/- as monthly maintenance from the date of petition. In this regard, the learned counsel appearing for the petitioner relied on the Judgment of this Court in P.Anandhi Vs. S.Murali Viswanathan in Crl.R.C(MD)No.745 of 2016, dated 19.03.2018, in which, this Court relied upon the Judgment of the Honourable Supreme Court of India, which reads as follows:-

7. In Jaiminiben Hirenbbhai Vyas @ Anr. V. Hirenbbhai Rameshchandra Vyas & Anr. [2015(1) LW (Crl.) 631 (SC)], the Supreme Court has stated as follows:

"7. Section 125 of the Cr.P.C., therefore,

<https://hcservices.ecourts.gov.in/hcservices/> requires the Court to consider making the



order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354(6) of the Cr.P.C., the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case.

8. In *Shail Kumari Devi v. Krishan Bhagwan Pathak*, this Court dealt with the question as to from which date a Magistrate may order payment of maintenance to wife, children or parents. In *Shail Kumari Devi*, this Court considered a catena of decisions by the various High Courts, before arriving at the conclusion that it was incorrect to hold that, as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application. The Court held, and we agree, that if the Magistrate intends to pass such an order, he is required to (2008) 9 SCC 632; Para's 39 - 41. record reasons in support of such Order. Thus, such maintenance can be awarded from the date of the Order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary."

From the dictum laid down by the Honourable Supreme Court of India, it is clear that the Magistrate should give some reasons in support of either of the eventualities for deciding as to the date from which the maintenance amount should be paid with reasons, namely, whether from the date of petition or from the date of order.

13. On a perusal of the order passed by the first revision Court, there is no reason assigned for ordering maintenance from the date of petition.

14. In view of the above discussions, this revision is partly allowed and modified as follows:-

(i) The petitioner shall pay a sum of Rs.7,500/- as monthly maintenance to the respondent.

<https://hccservices.mca.gov.in/hccservices/>



(ii) The maintenance of Rs.7,500/- shall be paid from the date of order of the maintenance case namely from 18.12.2019.

(iii) The petitioner shall pay the arrears of maintenance from the date of the order, namely 18.12.2019 within a period of six weeks from the date of receipt of a copy of this order. Thereafter, the petitioner shall pay the monthly maintenance of Rs.7,500/- on or before 5th of every English Calender month to the respondent.

Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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 Principal District and Sessions Judge,
Pudukkottai.

2.The Chief Judicial Magistrate,
Pudukkottai.

Order made in
Crl.R.C(MD)No.934 of 2021
17.03.2022

PS

MS/28.03.2022/6P.3C