



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2022

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.R.C(MD)No.783 of 2021

Karuppayee

... Petitioner/Respondent/
Petitioner

Vs.

P.Kannan

... Respondent/Petitioner/
Respondent

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records in Cr.R.P.No.49 of 2018 on the file of the IV Additional District Court, Madurai, dated 02.08.2021 against M.C.No.23 of 2017 on the file of the Additional Chief Judicial Magistrate, Madurai, dated 27.06.2018 and to set aside and reverse the same.

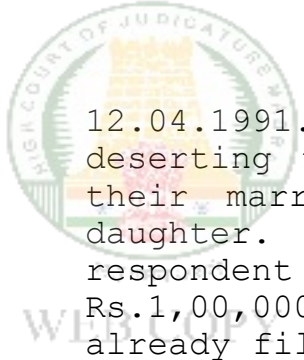
For Petitioner : Mr.S.A.Ajmal Khan

For Respondent : Mr.K.S.Durai Pandian

ORDER

This revision has been filed challenging the order passed in Cr1.R.P.No.49 of 2018, dated 02.08.2021, on the file of the IV Additional District Court, Madurai, thereby reversed the findings of the Court below passed in M.C.No.23 of 2017, dated 27.06.2018 on the file of the Additional Chief Judicial Magistrate, Madurai, thereby ordered maintenance of Rs.2,000/- per month payable by the respondent herein.

2.The petitioner filed a petition for maintenance under Section 125 of Cr.P.C in M.C.No.23 of 2017 claiming maintenance of Rs.10,000/- per month. According to the petitioner, she got married with the respondent on 10.03.1990 in a Pillaiyar Temple in Avarankulam Village in accordance with their communal rituals. Both were living together as husband and wife for 5 years. Due to their wedlock, they gave birth to a child by name Petchi, who was born on



12.04.1991. Thereafter, the respondent changed his attitude by deserting the petitioner and got married with one Erulayee. After their marriage, the respondent deserted the petitioner and her daughter. The petitioner has no source of income, whereas the respondent is having 30 acres of land and he has income more than Rs.1,00,000/- per year from agriculture. In fact, the petitioner already filed a petition for maintenance in M.C.No.76 of 2004 on the file of the Family Court, in which, the petitioner filed a petition for DNA Test for her daughter and the respondent and the same was dismissed by the Family Court. Aggrieved by the same, the petitioner filed a revision in Crl.R.C(MD)No.438 of 2008 on the file of this Court and the same was also disposed for the reason that her minor daughter became major and to decide the maintenance, the relationship between the petitioner and the respondent are enough. Since the petitioner did not attend the Family Court, the said maintenance case in M.C.No.76 of 2004 was dismissed for default on 11.02.2016.

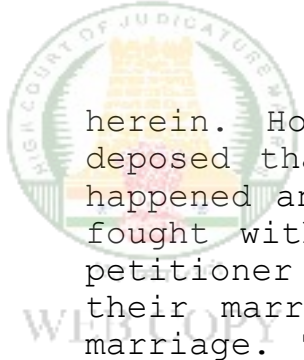
3.The case of the respondent is that he denied the very solemnization of the marriage between the petitioner and the respondent herein. He got married with one Irulayee on 24.06.1991 and gave birth to two sons and one daughter. Therefore, the petitioner is not entitled for any maintenance from the respondent, since she failed to prove any matrimonial relationship between them as husband and wife.

4.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

5.Before the trial Court, on the side of the petitioner, three witnesses were examined as P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.8. On the side of the respondent, two witnesses were examined as R.W.1 and R.W.2 and marked Ex.R.1 to Ex.R.9.

6.The Court below, based on the oral and documentary evidence, ordered a sum of Rs.2,000/- as monthly maintenance to the petitioner payable by the respondent. Aggrieved by the same, the respondent filed a revision and the same was allowed and the maintenance petition filed by the petitioner was dismissed on the ground that the earlier petition filed by the petitioner was dismissed for default and she failed to pursue the case. That apart, the petitioner failed to file any suit for partition as against the respondent claiming share over the property. The petitioner was examined as P.W.1, her daughter was examined as P.W.2 and the brother of the petitioner was examined as P.W.3.

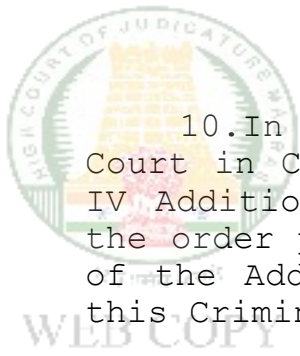
7.On a perusal of the evidence revealed that the petitioner caused notice to the respondent claiming partition from the property owned by the respondent, which was duly received by the respondent



herein. However, there was no reply from the respondent. P.W.3 deposed that the marriage between the respondent and one Irulayee happened and the respondent deserted the petitioner. The petitioner fought with the respondent herein from the year 2004 itself. The petitioner alleged that their marriage was a love marriage. After their marriage, the respondent's family members not accepted the marriage. Therefore both lived in the house of P.W.3, who is the brother of the petitioner and gave birth to P.W.2. Thereafter, the respondent deserted her and her daughter and married the said Irulayee. Even the marriage between the petitioner and the respondent is not proved as solemnized according to their rituals, to claim maintenance under Section 125 of Cr.P.C., the living together relationship as husband and wife is more than enough to claim maintenance. Therefore, the petitioner is entitled to get maintenance from the respondent. That apart, the petitioner is being a poor lady, who is living along with his younger brother-P.W.3, to fight against a wealthy financial sound person that too having political background living in the same Village.

8.Further, the Honourable Supreme Court of India in the case of **Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit** reported in **CDJ 1999 SC 638**, held that if the Magistrate is *prima facie* satisfied with regard to the performance of marriage in proceedings under Section 125 of Cr.P.C., which are of summary nature, strict proof of performance of essential rites is not required. Either of the parties aggrieved by the order of maintenance under Section 125 Cr.P.C can approach the civil Court for declaration of status as the order passed under Section 125 does not finally determine the rights and obligations of the parties.

9.That apart, the *prima facie* satisfaction of the Court with regard to the performance of marriage is enough and strict proof of marriage is not necessary. The wife includes a woman living together with co-habitation and give birth of a child. Further, mere filing of the earlier petition for maintenance and the same was dismissed for default is not a bar or impediment for the petitioner to bring an another petition for maintenance. Only if the earlier petition dismissed by the competent Court on merits, the petitioner is not entitled to file any subsequent petition for the same relief with similar cause of action. Therefore, the trial Court rightly awarded maintenance payable by the petitioner in favour of the respondent herein. Unfortunately, the Revisional Court set aside the order passed by the Court below only on the ground that the petitioner failed to file a partition suit as against the respondent after causing legal notice. Further, the petitioner failed to pursue the application for maintenance in M.C.No.76 of 2006 on the file of the Family Court. Therefore, the Revisional Court, without even applying mind, mechanically allowed the revision and set aside the well reasoned order passed by the Court below.



10. In view of the above, the order passed by the Revisional Court in Cr.R.P.No.49 of 2018, dated 02.08.2021 on the file of the IV Additional District Court, Madurai, is set aside by confirming the order passed in M.C.No.23 of 2017, dated 27.06.2018 on the file of the Additional Chief Judicial Magistrate, Madurai. Accordingly, this Criminal Revision Case is allowed. No costs.

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Sd/-
Assistant Registrar

/ /2022
Sub Assistant Registrar

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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 IV Additional District Court,
Madurai.
 2. The Additional Chief Judicial Magistrate,
Madurai.
- +2 CC to M/s.K.S.DURAIPANDIAN, Advocate
(SR-10905[F] dated 09/03/2022)
- +1 CC to M/s.S.A.AJMAL KHAN, Advocate
(SR-11018[F] dated 10/03/2022)

Order made in
Cr1.R.C(MD)No.783 of 2021
09.03.2022

SP/21/03/2022/4P/6C