



WEB COPY



Crl.O.P.No.1660 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.11.2023**

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

**Crl.O.P.No.1660 of 2018**

**and**

**Crl.M.P.No.625 of 2018**

Joseph Baby

... Petitioner

-Vs-

R.Kalaiselvi

... Respondent

**Prayer:** Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and quash the proceedings pending against the Petitioner herein in M.C.No.222 of 2017 on the file of the Additional Family Court, Coimbatore.

For Petitioner : Mrs.A.L.Ganthimathi  
Senior Counsel for  
Mr.S.Babu  
Mr.R.Venkatesan

For Respondent : No appearance



Crl.O.P.No.1660 of 2018

WEB COPY

### **ORDER**

This criminal original petition has been filed to quash the proceedings in M.C.No.222 of 2017 on the file of the Additional Family Court, Coimbatore.

2. The respondent herein has filed a petition seeking maintenance under Section 125 of Criminal Procedure Code. She alleged that she got married to the petitioner on 17.12.2013 and they both had exchanged rings during their marriage. Even before their marriage, they were running a business of 'Garlic'. Therefore, they had acquaintance and got married. In fact, the respondent had already got married with another person and after giving birth to two male children, he left them. Utilising the said circumstances, the petitioner had spoken sugar coated words and as such, the respondent had given consent for her marriage with the petitioner.



CrI.O.P.No.1660 of 2018

3. Mrs.A.L.Ganthimathi, learned senior counsel for the petitioner would submit that the petitioner has never lived with the respondent as husband and wife and he never married the respondent. Even the respondent has filed a petition seeking for maintenance with malafide and fraudulent intention only to extract the money from the petitioner. In fact, she has been involved in so many cases, in which, one of the case she is facing is defamation case in C.C.No.456 of 2017 on the file of the Judicial Magistrate No.V, Coimbatore. In the said case, she categorically stated that she got married to one H.Raghu and gave birth to two male children. But, she did not whisper about her divorce with the first husband and no materials were produced along with the maintenance case. Except the marriage invitation and the photographs, there are no other evidence to show that the petitioner got married her. That apart, the respondent filed a petition for restitution of conjugal rights in D.O.P.No.796 of 2017, on the file of the Additional Family Court, Coimbatore. In the said petition, the petitioner has filed an interlocutory application in I.A.No.560 of 2018, for rejection of complaint under Order 7 Rule 11 of C.P.C. The same was allowed.



Crl.O.P.No.1660 of 2018

WEB COPY

4. Aggrieved by the same, the respondent has filed an appeal in C.M.A.No.2988 of 2021 before this Court. This Court by an Judgment dated 02.11.2021, dismissed the appeal on the ground that there was no marriage between the petitioner and the respondent herein. When there was no relationship as husband and wife between the petitioner and the respondent, the the respondent is not liable to be maintained by the petitioner. Further, the respondent submitted that there are some transactions between the petitioner and the respondent. Due to which the respondent owes some money from the petitioner. In order to settle the said amount, she issued a cheque and the same was presented for collection by the petitioner. The said cheque was dishonoured on the ground 'funds insufficient'. Therefore, the petitioner had issued the statutory notice to the respondent. On receipt of the same, the respondent issued a reply notice dated 13.07.2016. In the said notice, she categorically stated that she had never seen the petitioner till the issuance of reply notice. If at all, they had got married and there was a marital relationship, she would have stated in the reply notice that the



CrI.O.P.No.1660 of 2018

petitioner is her husband. Notice was served on the respondent to file a counter before this Court. But, no one appeared on the date of hearing either in person or through Pleader.

5. According to the respondent, she got married to the petitioner on 07.12.2013. They lived together as husband and wife. Thereafter, she was not taken care of by her husband/petitioner and she was driven out from her matrimonial home. Therefore, she filed a petition for restitution of conjugal rights in D.O.P.No.796 of 2017 on the file of the Additional Principal Judge, Coimbatore. While pending the said petition, the petitioner filed an application in I.A.No.560 of 2018 for rejection of the petition under Order 7 Rule 11 of C.P.C. It was contested by the respondent and the trial Court allowed the said application and rejected the petition filed for restitution of conjugal rights in D.O.P.No.796 of 2017. The trial Court observed that even according to the respondent, the alleged marriage was solemnised under the Indian Christian Marriage Act. Therefore, the petition filed under Hindu Marriage Act is not maintainable. Further, the trial Court had observed that the alleged marriage is not a valid marriage giving rise to any cause of



CrI.O.P.No.1660 of 2018

action in favour of the respondent to seek the relief of restitution of conjugal rights under the Divorce Act, 1869. Therefore, the respondent failed to prove her marriage before the trial Court. Even according to the respondent, she got married to the said H.Raghu and gave birth to the two male children. She did not even produce any order of divorce between herself and her husband H.Raghu. Therefore, her first marriage is very much existing. As such, the alleged marriage with the petitioner is void and illegal.

6. Further, aggrieved by the order passed by the trial Court, the respondent has filed an appeal before this Court in C.M.A.No.2988 of 2021 and the Hon'ble Division Bench of this Court dismissed the appeal by Judgment dated 02.11.2021. The relevant portions of the said Judgment are extracted hereunder:

*"8. The marriage is said to have taken place on 17.12.2013 by exchange of rings and as well as following certain Hindu rituals. Paragraph No.11 to 17 of the petition indicate various money transactions between the*



WEB COPY



Crl.O.P.No.1660 of 2018

*Appellant and the Respondent and does not relate to any matrimonial dispute. A reading of the counter in I.A.No.560 of 2018 will clearly indicate that the Appellant has admitted that she has issued a legal notice to the Respondent on 19.01.2017, with regard to business disputes and about issuance of eleven cheques as security for business transactions. In the said notice, the Respondent herein is not referred to as the Appellant's husband.*

*9. The facts narrated above will clearly indicate that if really the marriage had taken place between the Appellant and the Respondent on 17.12.2013, the legal notice dated 19.01.2017 would have clearly indicated about the marital relationship between the parties. The Respondent herein had issued a legal notice on 24.01.2017*



WEB COPY



Crl.O.P.No.1660 of 2018

*denying all the allegations with regard to the money transactions and thereafter, the Appellant has chosen to file a complaint before the Police on 29.05.2017, alleging misuse of cheque. Only in the said complaint, the Appellant has chosen to refer the Respondent as her husband.*

*10. The above facts would clearly indicate that there is no marriage at all between the Appellant and the Respondent and due to some enmity arising out of some money transactions, the present petition under the Divorce Act for restitution of conjugal rights has been filed. Moreover, though the Appellant has claimed that she had obtained a decree for divorce from her first husband, she has not chosen either to file the copy of the order or even refer the date and case number in her petition. These facts will clearly*



WEB COPY



Crl.O.P.No.1660 of 2018

*point out that the Appellant herein is a married woman and she has been deserted by her husband and she has not obtained divorce through Court. This will clearly show that the Appellant continues to be the wife of another person whose name, the Appellant has not chosen to disclose. On the date of filing of the petition, the Appellant is 42 years old and the Respondent is 52 years old. Taking into consideration of the said facts, the Court can easily come to a conclusion that there was no marriage between the Appellant and the Respondent. That apart, the Family Court has got jurisdiction to entertain the proceedings for restitution of conjugal rights only between parties to a marriage. In the present case, this Court has already observed that there is no marriage at all between the Appellant and the Respondent herein. In such*



WEB COPY



Crl.O.P.No.1660 of 2018

*circumstances, the Family Court does not have any jurisdiction to entertain an application for restitution of conjugal rights. The Appellant may have a right to invoke the jurisdiction at the Family Court, if she wanted to declare her matrimonial status, but, in the present case, she has not sought to declare her matrimonial status, but, she just seeks a decree for restitution of conjugal rights on the assertion that she has already married the respondent herein."*

7. In the light of the above Judgment, it is clear that there was no marriage between the petitioner and the respondent herein. Therefore, the respondent cannot file a petition for maintenance under Section 125 of Cr.P.C.

8. In view of the above, the maintenance case in M.C.No.222 of 2017, filed by the respondent cannot be sustained and it is liable to be quashed.



Crl.O.P.No.1660 of 2018

Therefore, the proceedings pending against the petitioner herein in M.C.No.222 of 2017 on the file of the Additional Family Court, Coimbatore is quashed. Accordingly, this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

**01.11.2023**

veda

Internet:Yes

Index:Yes/No

Speaking Order/Non-speaking Order

Neutral Citation:Yes/No



WEB COPY



Crl.O.P.No.1660 of 2018

**G.K.ILANTHIRAIYAN. J.**

veda

To

The Additional Family Court,  
Coimbatore.

**Crl.O.P.No.1660 of 2018**  
**and**  
**CrI.M.P.No.625 of 2018**

**01.11.2023.**