



CRL.R.C.(MD).No.207 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2023

CORAM:

THE HON'BLE MR.JUSTICE G.ILANGO VAN

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and

CRL. MP(MD).No.2255 of 2021

A.Saravanan : Petitioner/Respondent

Vs.

S.Padma Priya : Respondent/Petitioner

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C, to set aside the order passed in M.C.No.16 of 2013 on the file of the learned Judicial Magistrate Court, Rajapalayam, dated 25.01.2021.

For Petitioner : Mr.C.Vakeeswaran

For Respondent : Mr.M.Natarajan

ORDER

This Revision Petition has been preferred against the order passed by the learned Judicial Magistrate Court, Rajapalayam, in M.C.No.16 of 2013, dated 25.01.2021.



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2. The facts in brief:

The marriage between the parties was an arranged one and performed on 18.02.2008 in Thiruparankundram Temple. After the marriage, they were living in the husband's house and there was no conjugal relationship between them, which was successfully prevented by the husband's mother. So even during their matrimonial life, the wife was harassed and ill-treated. Later that, her husband's mother started saying that she is suffering from mental illness. The husband is also a physically challenged person. Because of his physical condition, he was avoiding the conjugal relationship and only to cover up the above said deficiency, the husband is making complaint that the wife is suffering from mental illness.

3. On 09.04.2018, she was driven out of the house ever since she is living separately with false averments, the husband filed H.M.O.P.No.81 of 2009 for divorce. The efforts made by the wife for reunion with him failed. The husband own business and earning Rs.80,000/- per month. Seeking maintenance amount of Rs.30,000/- p.m, she has filed the maintenance case.



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4. That was resisted by the revision petitioner stating that by playing fraud, the above said marriage arrangement was made and the parents cleverly suppressed the mental disorder of the wife. The wife is suffering from Schizophrenia Chronic disorder. Only the wife refused him to have conjugal relationship, she was taken to the hospital for treatment. Though the Doctor advised her, she refused to take medication. So, because of the above said mental disorder, the marriage itself is a void one. So when the marriage itself is void one, there is no question of seeking maintenance.

5. Before the trial Court, the petitioner was examined as P.W.1 and another witness on her behalf was examined and on the side of the respondent, he was examined as R.W.1 and both sides three documents were marked.

6. At the conclusion of the enquiry, the trial Court has awarded Rs.3,000/- as monthly maintenance to the wife.

7. Challenging the above said order, this revision petition has been preferred by the husband on the sole ground that since the marriage itself



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is a nullity or a void one and divorce was also granted under Hindu Marriage Act in H.M.O.P.No.81 of 2009, dated 08.04.2015. She is not entitled for the maintenance at all, since she cannot be considered to be the wife. The order of maintenance was passed on 25.01.2021 and the order of divorce was passed on 08.04.2015, which means that during the pendency of M.C.No.16 of 2013, the above said order of divorce was passed by the Family Court. The divorce documents was also produced before the trial Court as Ex.R.2. So, that was rejected on the ground that the divorce was granted only on 08.04.2015, but whereas, the maintenance petition was filed on 23.08.2013 even before the date of the above said order. So according to the trial Court, the divorce is entitled for maintenance under Section 125 of Cr.P.C. and accordingly the plea that was raised by the revision petitioner that was rejected. A short point arises for consideration is whether the order was passed by the trial Court is legal.

8.The learned counsel for the petitioner relied upon the Judgment of this Court in ***Crl.R.C.(MD)No.867 of 2017 in Kathiresan Vs. Gowri, dated 03.08.2021***. For the purpose of argument that when the mental



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incapacity of the respondent was held to be proved in view of the order that has been passed by the Family Court, Madurai in H.M.O.P.No.81 of 2009, the respondent cannot be treated as divorced wife because of the above said unsoundness of the mind.

9. To ascertain the above said fact, the respondent was directed to be presented before the Court, she was also present and this Court made a formal enquiry to know her intelligence, she was able to answer only some questions. The Family Court has noted that she was suffering from Schizophrenia Chronic disorder. The Family Court also undertaken the psychiatric test through expert. It was found that she was Schizophrenia Chronic patient. It was also confirmed that the marriage did not consummate. No doubt that there is clear finding to the fact that she was affected by Schizophrenia Chronic mental illness.

10.Per contra, the learned Counsel for the respondent would submit that at the time of the marriage, she was hale and healthy and because of the subsequent events only, the above said disability occurred.



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11. Now a short point which is for consideration is whether in the ground of the above said mental health condition, the marriage itself is a nullity and whether on that ground the revision can be allowed.

12. With these background, let us go to the finding of the trial Court. It has been found that the decree of divorce was granted on 08.04.2015 but whereas the petitioner seeking maintenance was filed on 23.08.2013 itself. According to the trial Court, the wife is entitled for maintenance. No doubt that on the date of petition, there was no dissolution of marriage. It appears that the above said maintenance was filed on 2013 but the order is delayed in the matrimonial proceedings and it was finally decided on 08.04.2015. Whether any appeal has been preferred against the above said order or not is not clear on record.

13. Sections 5, 11 and 12 of the Hindu Marriage Act are extracted hereunder,

Section 5: Conditions for a Hindu marriage.

*A marriage may be solemnized between any two
Hindus, if the following conditions are fulfilled,*



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namely:

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of the marriage, neither party

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity;

(iii) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;

(iv) the parties are not within the degrees of



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prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

Section 11. Void marriages.

Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

Section 12. Voidable marriages.

(1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable



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and may be annulled by a decree of nullity on any of the following grounds, namely:

(a) that the marriage has not been consummated owing to the impotence of the respondent; or

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)], the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent; or



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(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in subsection (1), no petition for annulling a marriage

(a) on the ground specified in clause (c) of subsection (1) shall be entertained if

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of subsection (1) shall be entertained unless the court is



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satisfied

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the said ground.

14. When we go through the Sections 11 and 12 of the Hindu Marriage Act, difference will come to the light. Under Section 12 of the Act, the marriage will remain valid until it is avoided or annulled by the competent Court. Here the marriage is not void abinitio till it was annulled by the Family Court. From the date of filing of the maintenance petition till the date of order, the respondent is entitled for maintenance as



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awarded by the trial Court. After that it will stand automatically cancelled in view of the order of the Family Court. To the above said extend, the revision is partly allowed.

15. In the result, the revision is partly allowed to the extent noted above. Consequently, the connected miscellaneous petition is closed.

06.01.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J.

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