



Crl.R.C.(MD)No.299 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD) No.299 of 2021

and

Crl.M.P(MD).No.2924 of 2021

L.Stephen Adaikalaraj

... Petitioner/Respondent

Vs.

J.Renitta

... Respondent/Petitioner

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the order made in M.C.No.46 of 2016 on the file of the learned Family Court, Trichy dated 19.12.2020 and set aside the same.

For Petitioner : Mr.T.Antony Arulraj

For Respondent : Mr.C.Suresh Kannan



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ORDER

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The petitioner is the husband and the respondent is his wife. The petitioner's first wife died in the year 2013. The respondent got divorce from his first husband. Thereafter, the family members of both the families, knowing the first marriage of each other, solemnised their marriage following Christian ceremony on 27.11.2014. The respondent/husband has one son namely, Frederick Joe, aged 15 years, born through his first wife. He has to maintain him and his aged parents. At the time of marriage 15 gm gold jewels and Rs.50,000/- Sridhana articles and also 8 gm ring were given to the husband by the parents of the petitioner/wife. They were living happily after the marriage. In the meantime, the respondent/husband developed relationship with one Edwin. Hence, the petitioner/wife approached that lady Edwin and advised her to sever the relationship from her husband. But, she refused the relationship. Thereafter, she informed to his parents. The respondent/husband refused their marriage and sent her out of their home. In between, he filed suit to declare their marriage as 'null and void' and the said suit was dismissed. Finally, the petitioner/wife filed the maintenance petition claiming maintenance for herself. The trial Judge awarded Rs.7,000/- per month as



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maintenance to the wife. Challenging the same, the respondent/husband filed this revision before this Court.

2. The learned counsel for the petitioner/husband submitted that he disputed the validity of the maintenance and also raised a point that the petitioner received salary of Rs.24,591/-. Out of the said amount, he is obliged to maintain his age old parents and also the son born through his first wife. Hence, the learned counsel for the petitioner seeks for dismissal of the maintenance petition.

3. The learned counsel for the respondent/wife submitted that all the facts was considered by the learned trial Judge. The petitioner's mother is also receiving the family pension. Hence, the contention of the petitioner that he is obliged to maintain the parents can not be accepted. Further, the suit filed by the petitioner/husband to declare the marriage 'null and void' was dismissed. Hence the argument of the petitioner that the marriage was not solemnised in accordance with any Christian ceremony is also not correct.



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4. This Court has considered the rival submissions made by both side, and perused the records and also the impugned judgement passed by the learned trial Judge.

5. As rightly pointed out by the learned counsel for the respondent/wife, the petitioner's suit for declaration of the marriage 'null and void' was dismissed. Hence, it is proved that the marriage was solemnised by following Christian ceremony. Hence, the plea of the petitioner/husband that the marriage is not solemnised according to the customs of Christian faith is not correct and hence there is no valid marriage is not accepted.

6. The similar plea raised in this case was also raised by a husband before the Hon'ble Supreme Court in the case of ***Badshah v. Urmila Badshah Godse***, reported in ***2014 1 SCC 188*** and the same was not accepted by the Hon'ble Supreme Court with the following finding:-

13. On this basis, it was pleaded before us that this matter be also tagged along with the aforesaid case. However, in the facts of the present case, we do not deem it proper to do so as we find that the view taken



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by the courts below is perfectly justified. We are dealing with a situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by suppressing the factum of alleged first marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. Our reasons for this course of action are stated hereinafter:

13.1. Firstly, in Chanmuniya case [Chanmuniya v. Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141 : (2011) 1 SCC (Civ) 53 : (2011) 2 SCC (Cri) 666] , the parties had been living together for a long time and on that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of maintenance under Section 125 CrPC by interpreting the term “wife” widely. The Court has impressed that if man and woman have been living together for a long time even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under Section 125 CrPC. On the other hand, in the present case, Respondent 1 has been able to prove, by cogent



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and strong evidence, that the petitioner and Respondent 1 had been married to each other.

13.3.Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve “social justice” which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.

20. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon case [(1584) 3 Co Rep 7a : 76 ER 637]



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which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction of ut res magis valeat quam pereat in such cases i.e. where alternative constructions are possible the court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125 CrPC, such a woman is to be treated as the legally wedded wife.

7.By applying the above principle and also considering the dismissal of the suit filed by the petitioner to declare the marriage “Null and Void”, the respondent is very well is the wife of the petitioner and hence, her claim of maintenance is legally maintainable.



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8. Before the trial Court on the side of the wife she examined herself as PW1 and one Anbuselvan as PW2 and marked Ex.P1 to Ex.P9. On the side of the husband, he examined himself as RW1 and marked Ex.R1 to Ex.R10.

9. According to the petitioner, he received the monthly salary of Rs.19,000/-. But, the salary certificate was marked as Ex.P9 in which it is stated as the monthly salary of the petitioner is Rs.24,591/-. The learned trial Judge, considering all the aspects, granted only Rs.7,000/- as monthly maintenance and the same is quiet logical and same is in accordance with law guidelines issued by the Hon'ble Supreme Court in the case of ***Rajnesh v. Neha***, reported in **(2021) 2 SCC 324** to determine the monthly maintenance:

- “1. Status of the parties.*
- 2. Reasonable wants of the claimant.*
- 3. The independent income and property of the claimant.*
- 4. The number of persons, the non-applicant has to maintain.*
- 5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.*
- 6. Non-applicant's liabilities, if any.*



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- 7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.*
- 8. Payment capacity of the non-applicant.*
- 9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.*
- 10. The non-applicant to defray the cost of litigation.*
- 11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act.”*

10. Hence, the quantum is reasonable one considering the cost of living and the social status of the parties. Hence, this Court finds no merits to interfere either in the quantum or in entitlement of the compensation.

11. In the result, this Criminal Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
PJL/sbn



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To
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1. The Judge,
Family Judge, Trichy.
2. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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