



Crl.R.C.(MD).No.566 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.09.2023

Pronounced on : 19.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD)No.566 of 2023

1.Natchammal

2.Minor Yogeshwari

.. Petitioners / Petitioners

Vs.

Murugan

.. Respondent /Respondent

[The 2nd Petitioner minor is represented by
his Mother/Natural Guardian, 1st Petitioner]

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records of the impugned order dated 17.04.2023 passed in M.C.No.24 of 2022 on the file of the Family Court, Sivagangai and to set aside the order passed against the petitioners.

For Petitioners : Mr.S.Vishnuvardhan

For Respondent : Mr.T.Palanisamy



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ORDER

The first petitioner is the wife of the respondent and she filed this revision challenging the maintenance order, dated 17.04.2023 passed in M.C.No.24 of 2022 by the learned Judge, Family Court, Sivagangai.

2. The respondent married the first petitioner on 27.11.2015. The respondent is said to have assaulted the first petitioner using filthy language and abusing her. At that time, the first petitioner was pregnant. He further threatened the first petitioner that he would marry another lady if she would not give birth to a male child. On 17.10.2016, the second respondent was born. The respondent did not come and see the child. He further demanded gold ornaments viz., gold chain, gold ring and silver anklet etc., for the child. He also questioned the birth of the female child instead of male child. He also received the jewels of the first petitioner and further demanded jewels and driven her out with the second petitioner from his house on 20.11.2019. Thereafter, the respondent never took care of the petitioners and did not even visit them. The respondent is working in a private parcel service and earning Rs.



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40,000/- per month. He also has immovable property worth about Rs. 10,00,000/-. Due to the illness of the first petitioner's father, the petitioners are unable to maintain themselves. Hence, they filed the maintenance petition claiming maintenance of Rs.25,000/- per month.

3. The respondent filed the counter denying the allegation made in the maintenance petition. He married the first petitioner after the demise of his first wife. The first petitioner married the respondent suppressing her earlier marriage i.e., she stated that her husband was dead. He further denied the allegation of cruelty alleged to have been caused by him. He also denied the income alleged by the first petitioner. He also stated that the first petitioner/wife did not allow him to see the child and made a false complaint before the All Women Police Station, Sivagangai. He is working as daily wager and hence he seeks for dismissal of maintenance petition.

4. The learned trial Judge considered the witnesses, viz., PW.1 to PW.3, Ex.P1 and Ex.P2, RW.1 and RW.2, Ex.R1 to R6, and granted maintenance of Rs.4500/- to the second petitioner and dismissed the



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5. The learned counsel for the petitioners submitted that the reasoning given by the trial Court that the first petitioner has not established the factum of dissolution of marriage between her and her first husband is not correct. PW.2 and PW.3 clearly stated about the death of her first husband. Hence the finding the learned trial Judge has to be set aside. The learned counsel for the petitioners further submitted that the finding of the trial Court that the first petitioner never established the cruelty caused by the respondent and also did not produce any evidence to prove the cruelty, is not correct. Based on the said finding, the learned Judge dismissed the petition and the same is not in accordance with law. In the summary proceedings, the learned Judge has no jurisdiction to decide the issue. Hence he seeks to allow this revision.

6. The learned counsel for the respondent submitted that learned trial Judge correctly appreciated the evidence of the PW.1 to PW.3 and RW.1 and RW.2 and came into conclusion that the petitioner entered the



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marriage with the respondent by falsely stating that her first husband was dead. The said finding is in accordance with law and hence there is no reason to interfere with the judgment impugned in this revision petition.

7. This Court has considered the rival submissions made by both parties and perused the records and also the impugned order.

8. From the records, it is clear that the respondent entered into marriage with the first petitioner after the demise of his first wife. The first petitioner also entered into marriage with the respondent after the demise of her first husband. The marriage was solemnized on 27.11.2015. Out of the wedlock, the second petitioner was born on 07.10.2016. After some years, the respondent took a stand that the first petitioner suppressed the factum that her first husband is alive. The learned trial Judge without any evidence to prove the above fact, erroneously came to the conclusion that the first petitioner did not prove the dissolution of the earlier marriage. The learned trial Judge came to the conclusion only on the ground that the first petitioner has not produced death certificate of her first husband. The learned trial Judge



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failed to consider the evidence of PW.2 and PW.3, who categorically deposed that they heard about the death of the first husband of the first petitioner.

9. As per Section 108 of the Evidence Act, it is the duty of the respondent to prove that the first husband of the first petitioner is alive. But, the learned trial Judge shifted the burden upon the first petitioner. Hence, this Court finds perversity in the finding of the learned trial Judge.

9.1. When the husband disputed the existence of the earlier marriage at the time of solemnizing the second marriage, he has to be adduced the evidence to prove the subsistence of the earlier marriage, but the learned trial Judge wrongly declined to grant maintenance on the ground that wife has not produced the evidence for the dissolution of the marriage.

9.2. In this case, the petitioner filed M.C.No.24 of 2022 to claim maintenance in the year 2022, ie., after 7 years from the date of marriage and 6 years from the birth of first respondent. Hence, from the long cohabitation between the petitioner from the date of marriage 27.11.2015



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and the filing of the MC petition in the year 2022, it can easily presumed that they lived as husband and wife and the petitioner very well come under the definition of 'Wife' under Section 125 Cr.P.C. The same was fortified by the judgment of the Hon'ble Supreme Court reported in **2014(1)SCC188 and 2011(12)SCC189**. The relevant paragraphs are extracted hereunder:

9.2. Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188 :

“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



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the present case, Respondent 1 has been able to prove, by cogent 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.”

9.2. Pyla Mutyalamma v. Pyla Suri Demudu, (2011) 12 SCC 189:

“19. But, proof and evidence of subsistence of an earlier marriage at the time of solemnising the second marriage, has



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to be adduced by the husband taking the plea of subsistence of an earlier marriage and when a plea of subsisting marriage is raised by the respondent husband, it has to be satisfactorily proved by tendering evidence. This was the view taken by the learned Judges in Savitaben case [(2005) 3 SCC 636 : 2005 SCC (Cri) 787] also which has been relied upon by the respondent husband. Hence, even if the ratio of this case relied upon by the respondent husband is applied, the respondent husband herein has failed to establish his plea that his earlier marriage was at all in subsistence which he claims to have performed in the year 1970 as he has not led even an iota of evidence in support of his earlier marriage including the fact that he has not produced a single witness except the so-called first wife as a witness of proof of his earlier marriage. This strong circumstance apart from the facts recorded hereinabove, goes heavily against the respondent husband.

20. We may further take note of an important legal aspect as laid down by the Supreme Court in Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav (1988) 1 SCC 530, that the nature of the proof of marriage required for a proceeding under Section 125 CrPC need not be so strong or conclusive as in a criminal proceeding for an offence under Section 494 IPC since, the jurisdiction of the Magistrate under Section 125 CrPC being preventive in nature, the Magistrate cannot



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usurp the jurisdiction in matrimonial dispute possessed by the civil court. The object of the section being to afford a swift remedy, and the determination by the Magistrate as to the status of the parties being subject to a final determination of the civil court, when the husband denies that the applicant is not his wife, all that the Magistrate has to find, in a proceeding under Section 125 CrPC, is whether there was some marriage ceremony between the parties, whether they have lived as husband and wife in the eyes of their neighbours, whether children were born from the union.

21. It was still further laid down in Sethurathinam Pillai v. Barabaraa Dolly Sethurathinam [(1970) 1 SCWR 589] that if there was affirmative evidence on the aforesaid points, the Magistrate would not enter into complicated questions of law as to the validity of the marriage according to the sacrament element or personal law and the like, which are questions for determination by the civil court. If the evidence led in a proceeding under Section 125 CrPC raises a presumption that the applicant was the wife of the respondent, it would be sufficient for the Magistrate to pass an order granting maintenance under the proceeding. But if the husband wishes to impeach the validity of the marriage, he will have to bring a declaratory suit in the civil court where the whole questions may be gone into wherein he can contend that the marriage was not a valid marriage or was a fraud or coercion practised upon him.

22. Fortifying this view, it was further laid down by the Supreme Court in Rajathi v. C. Ganesan [(1999) 6 SCC 326 : 1999 SCC (Cri) 1118 : AIR 1999 SC 2374] also, that in a case under Section 125 CrPC, the Magistrate has to take prima facie view of the matter and it is not necessary for the



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Magistrate to go into matrimonial disparity between the parties in detail in order to deny maintenance to the claimant wife. Section 125 CrPC proceeds on de facto marriage and not marriage de jure. Thus, validity of the marriage will not be a ground for refusal of maintenance if other requirements of Section 125 CrPC are fulfilled.”

10. Further, the Hon'ble Supreme Court cautioned to delve into a detailed discussion in the summary proceedings regarding the status of the parties.

11. In this case, both are married and begotten the child. The marriage was solemnized on 27.11.2015. As per Section 108 of the Evidence Act, it is legitimate to presume that a man is not alive unless contrary is proved by the opposite parties that he has not been heard of for seven years. In this case, the first petitioner specifically pleaded that the first husband died in the year 2014. PW2 and PW3 also ascertained the said fact. In the said circumstances, the learned trial Judge erred in dismissing the claim of the first petitioner holding that she has not proved the death of her first husband.



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12. The learned trial Judge also committed another erroneous finding that the first petitioner has not proved the cruelty caused to her by examining the independent witnesses. In the considerable view of this Court, the said finding is without jurisdiction, when the FIR and investigation is pending in the said aspect. Therefore, in all aspects, the finding of the learned trial Judge that the first petitioner is not entitled to maintenance is not legally correct and hence, the same is liable to be set aside and accordingly set aside.

13. In the result, this Criminal Revision case is allowed. The first petitioner is also entitled to Rs.5000/- as a monthly maintenance from the date of the petition. Hence, the respondent is directed to pay maintenance of Rs.10,000/- totally to both the petitioners from the date of petition.

19.10.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

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



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K.K.RAMAKRISHNAN, J.

PJL

**Order made in
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