



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.7032 of 2023
and Crl.MP.No.4385 of 2023

P.Dharmaraj

..Petitioner/Petitioner/Respondent

.Vs.

1.K.Sangeetha

2.Minor Kabish

.. Respondents/Respondents/Petitioners

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 29.12.2022 in CRP.No.28 of 2021 on the file of the learned Special Court (for the trial of cases registered under SC/ST-Prevention of Atrocities Act, Namakkal modifying the order of maintenance granted by the Judicial Magistrate, Paramathi in M.C.No.6 of 2021 dated 05.10.2021.

For Petitioner : Mr.N.A.Ravindran

For Respondents : No appearance

ORDER

This criminal original petition has been filed challenging the Order passed by the Court below in CRP.No.28 of 2021, dated 29.12.2022, partly setting aside the order passed by the learned Judicial Magistrate, Paramthi in M.C.No.6 of 2021



insofar as granting maintenance to the 2nd respondent is concerned and confirming the order passed by the learned Judicial Magistrate in granting maintenance to the 1st respondent.

2.The 1st respondent filed a maintenance case along with the minor son against the petitioner claiming for monthly maintenance of Rs.10,000/- to the 1st respondent and Rs.20,000/- to the 2nd respondent. This petition was contested by the petitioner by taking a very specific stand that the 1st respondent was living in adultery with some other person and the child that was born to the 1st respondent was not the child of the petitioner and therefore, the respondents are not entitled for any maintenance.

3.The trial Court on considering the facts and circumstances of the case and on appreciation of evidence ordered maintenance through order dated 5.10.2021 and directed the petitioner to pay a sum of Rs.2500/- to the 1st respondent and a sum of Rs.2500/- to the 2nd respondent and in total a sum of Rs.5000/- as maintenance to the respondents every month.

4.Aggrieved by the above Order passed by the learned Judicial Magistrate, the petitioner filed criminal revision petition before the Court below. During the pendency of the criminal revision petition, the petitioner filed CMP.No.255 of 2021 seeking for DNA test. This petition was ordered and the DNA report was marked as



Ex.C.1. This report showed that the petitioner is not the biological father of 2nd respondent.

5.The Court below on considering the facts and circumstances of the case and after considering the DNA report, came to a conclusion that no maintenance is payable to the child viz., the 2nd respondent. But, however, the petitioner is liable to pay maintenance to the 1st respondent and accordingly, directed the petitioner to pay the maintenance that was fixed by the trial Court insofar as the 1st petitioner is concerned. Aggrieved by the same, this criminal original petition has been filed before this Court.

6.The respondents have been served with notice and their names have also been printed in the cause list. However, there is no representation for the respondents either in person or through counsel.

7.In the instant case, the only issue that arises for consideration is as to whether the petitioner is not liable to pay the maintenance to the 1st respondent on the ground that she was living in adultery.

8.The petitioner right from the inception was taking a plea that the 1st respondent was living in adultery with some other person and that the petitioner is not the biological father of the child. This stand that was taken by the petitioner



was fortified by the DNA report that came to be marked before the Court below as Ex.C.1. This report showed that the petitioner is not the biological father of the 2nd respondent. The Court below has rightly denied the claim of maintenance for the child.

9.Insofar as the 1st respondent is concerned, the Court below has taken into consideration the marriage invitation, registration of marriage etc and has held that there was a valid marriage between the petitioner and the 1st respondent and this marriage has not been dissolved in the manner known to law and therefore, the petitioner is bound to pay maintenance to the 1st respondent.

10.Section 125 (4) Cr.PC., makes it clear that no wife will be entitled to receive maintenance from the husband if she is living in adultery. This term "living in adultery" must be understood as to outright adulterous conduct on the part of the wife. In common parlance, the wife should be having an extra marital relationship and should be leading a life of adultery and in such circumstances, the wife forfeits her right to claim for any maintenance in view of Section 125(4) Cr.PC. In the instant case, the petitioner took a stand that the 1st respondent is living in adultery and that the child was not born to him. It was proved that the petitioner is not the biological father of the child. This by itself is a clinching fact to show that the 1st respondent is living in adultery with someone else. The petitioner also took a very clear stand that the marriage never consummated. Therefore, it cannot be



assumed

WEB COPY

that the 1st respondent continued to cohabit with both the petitioner and some other person. There is no reason to arrive at such a conclusion since right from the beginning, there was a dispute between the petitioner and the 1st respondent and the petitioner has infact filed a petition to declare the marriage itself as null and void.

11.The Court below has presumed that there was a marriage between the petitioner and the 1st respondent and this marriage was also registered and therefore, it must be presumed that the 1st respondent continued to live with the petitioner and she was also involved in some solitary Act of adultery and therefore, she cannot be denied the maintenance. This finding rendered by the Court below is unsustainable. The moment the stand taken by the petitioner is strengthened by the DNA report, the presumption goes in favour of the petitioner with respect to the stand that was taken by him. Thereafter, it is for the 1st respondent to rebut that presumption by showing that she continued to live with the petitioner. Such a rebuttal was not done on the side of the 1st respondent. Hence, this Court holds that the findings of the Court below to the effect that the petitioner did not prove that the 1st respondent is living in adultery after marriage since the marriage is in subsistence, is unsustainable and is a perverse finding which requires the interference of this Court.



WEB COPY



N. ANAND VENKATESH., J
KP

12. In the result, the order passed by the Court below in CRP.No.28 of 2021, dated 29.12.2022, is hereby set aside and this criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

11.01.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To
1. Judicial Magistrate, Paramathi.
2. Special Court
(for the trial of cases
registered under
SC/ST-Prevention of Atrocities Act, Namakkal).

Crl.O.P No.7032 of 2023

11.01.2024