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Crl.R.C.No.320 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.11.2023

Delivered on : 08.03.2024

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C.No.320 of 2021 and
Crl.M.P.No.6146 of 2021

Dr.L.Srinivasan

...Petitioner/Respondent

-Vs-

S.Jensi Rani

...Respondent/Petitioner

Prayer - Criminal Revision Case filed under Section 397 r/w.401 of Cr.P.C., to call for records and revise the order in M.C.No.525 of 2017 on the file of the learned VI Additional Family Court, Chennai dated 02.03.2020.

For Appellant : Mr.V.Raghavachari
Senior Counsel for K.Prabhakaran

For Respondent : Mr.R.Thanigaarasu

ORDER

The Criminal Revision case has been filed to set aside the order passed by the learned VI Additional Principal Judge, Family Court, Chennai in M.C.No.525 of 2017 dated 02.03.2020.



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2. The learned Senior Counsel appearing for the Revision Petitioner submitted that the order of maintenance as ordered by the learned VI Additional Principal Judge, Family Court, Chennai in M.C.No.525 of 2017 dated 02.03.2020 itself is perverse. The factum of marriage had not been proved.

3. The learned Counsel for the Revision Petitioner invited the attention of this Court to the discussion by the learned VI Additional Principal Judge, Family Court Chennai regarding the order granting maintenance wherein the learned Judge had stated that I.A.No.1 of 2019 was filed to set aside the Exparte Decree (Restitution of conjugal rights) in H.M.O.P.No.3457 of 2009. H.M.O.P.No.3457 of 2009 was filed by the Petitioner in M.C.No.525 of 2017 seeking restitution of conjugal rights which was against the decreed exparte. The Respondent in maintenance case had filed I.A.No.1 of 2019 which was kept pending by the very same Judge.



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4. It is the submission of the learned Senior Counsel for the Revision Petitioner that the learned VI Additional Principal Judge, Family Court Chennai ought to have set aside the exparte decree and after disposal of the H.M.O.P, should have disposed off the maintenance case. Instead I.A.No.1 of 2019 in H.M.O.P.No.3457 of 2009 was kept pending. Petition to set aside the exparte decree was pending for enquiry. At that time, the learned VI Additional Principal Judge, Family Court Chennai had discussed about the H.M.O.P decree and the order of the learned Judge was based on If's and But's. As on the date of passing the order in maintenance case, the factum of marriage between the Petitioner and Respondent in M.C.No.525 of 2017 had not been proved.

5. The learned Senior Counsel for the Revision Petitioner further submitted that the Petitioner in M.C.No.525 of 2017 had furnished the receipt of the temple, in which the marriage took place. It was signed by one Sarangapani. The Respondent in the maintenance case could not verify the receipt. By that time, the maintenance case was ordered, he had obtained R.T.I reply, regarding the receipt issued and the registration of marriage before the said temple. It was stated that there was no such Executive Officer by the name Sarangapani on the date of the alleged issue



of receipt. Further he furnished a photo regarding the Kumbabhishekam of the temple in the year 2008, in which the plaque mentions the name of the Executive Officer as Manivannan. Therefore it is his submission that based on the alleged marriage receipt, the learned VI Additional Principal Judge, Ms.Sridevi had arrived at a conclusion that the Petitioner in Maintenance case was the wife.

6. Further it is his submission that the claim of the Petitioner in the M.C.No.525 of 2017 that she was working as a nurse in Kumaran Hospital in Chennai, where the Respondent in maintenance case was working as a Doctor. The Respondent in M.C.No.525 of 2017 used to visit the Nurse's hostel in which the Petitioner in Maintenance case stayed and the Respondent in M.C.No.525 of 2017, used to stay with her over night which was unbelievable. A man visiting a Nurse's hostel particularly exclusively for women, in the night and staying there overnight can not at all be believed. Further in the evidence in the pleading and in the discussion by the learned Judge, it was stated that it was the Petitioner in the maintenance case underwent two abortions. She was not an illiterate women and also she was a nurse. If that be so, what prevented her from producing appropriate relevant documents regarding such claim in the maintenance case.



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7. Also it is his submission that the evidence of the Petitioner in the M.C.No.525 of 2017 states that the Respondent introduced the Petitioner to his parents at Erode. If that be so, accepting the version of the Petitioner in the maintenance case for the purpose of argument sake, if the Respondent had left the matrimonial home without informing the Petitioner in M.C.No.525 of 2017, what prevented the Petitioner from approaching the parents of the Respondent at Erode. But she had not done so. There were too many questions to be answered and too many loopholes in the story of the Petitioner in the maintenance case.

8. The learned Senior Counsel for the Revision Petitioner further invited the attention of this Court to the contents of the counter filed by the Respondent in the maintenance case. The Respondent had given a Police complaint regarding the alleged kidnapping by the Petitioner in maintenance case. Also he would submit that the Respondent in maintenance case had preferred a suit in O.S.No.71 of 2008 to declare the marriage as null and void. After trial, the suit was dismissed against which the plaintiff in O.S.No.71 of 2008, the Revision Petitioner herein had preferred Appeal before the Hon'ble High Court and it is pending. The



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factum of marriage had to be gone into in-detail whereas the maintenance case was decided as a summary proceeding. The order of maintenance case had caused depression to the Revision Petitioner herein who had married a Doctor and living at Erode.

9. Further he would submit that the Petitioner in maintenance case was a Christian. The factum of marriage as claimed by the Petitioner in maintenance case can not at all be considered as an acceptable marriage. It was an attempt to disturb the Respondent in maintenance case. It was only an one sided love affair for which the Respondent in maintenance case had not responded. The factum of marriage was not at all proved. Therefore the order passed by the learned VI Additional Principal Judge, Family Court Chennai granting maintenance is to be set aside as perverse.

10. The learned Counsel for the Respondent submitted that the suit O.S.No.71 of 2008 filed by the Respondent in M.C.No.71 of 2008 was dismissed based on the appreciation of evidence by the learned VI Additional Principal Judge, Family Court, Chennai by judgment dated 08.02.2018. The learned Counsel for the Respondent in the Revision case also submitted that the Respondent was not a Christian as claimed by the



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Revision Petitioner.

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11. The learned Counsel for the Respondent invited the attention of this Court to the Ex.A-1 in O.S.No.71 of 2008 which was the letter given by the plaintiff to the Commissioner of Police, Egmore. It is to be noted that the Complaint was given by the plaintiff in O.S.No.71 of 2008 to the Commissioner of Police. No receipt was issued by the Office of the Commissioner of Police regarding the receipt of the complaint or registration of Community Service Register or Registration of F.I.R. The said letter Ex.A-1 was created only for the purpose of the suit. The Respondent in M.C. No. 525 of 2017 had filed O.S.No.71 of 2018 only for the purpose of evading the claim of bigamy. There is evidence before the trial Court during the trial of the suit in O.S.No.71 of 2008 through D.W-2/ Krishnammal had stated in her evidence that she was a witness to the Respondent and the Petitioner in M.C.No.525 of 2017, co-habiting under the same roof and therefore there was sexual relationship between them. D.W-3/Manimuthu in O.S.No.71 of 2008 was a Ward Boy in the Hospital where the Respondent and the Petitioner in M.C.No. 525 of 2017 worked.

12. Also the learned Counsel for the Respondent also invited the



attention of this Court to the cross examination of the Respondent in M.C.NO.525 of 2017 in which he had admitted that he had taken the Petitioner in M.C.No.525 of 2017 for outing. Also the learned Counsel for the Petitioner in M.C.No.525 of 2017 submitted that the Ex.B-1 Marriage receipt was not disputed by the Respondent in M.C.No.525 of 2017 at the time of marking of the said document. After marrying the Petitioner in M.C.No.525 of 2017, both lived as a Husband and wife. When the Petitioner in M.C.No,525 of 2017 went to her mother's house, without informing the Petitioner in M.C.No,525 of 2017, the Respondent left the matrimonial home and his whereabouts were not known to the Petitioner in M.C.No.525 of 2017.

13. The submission of the learned Senior Counsel for the Revision Petitioner cannot at all be accepted regarding the marriage, as the marriage itself was arranged by the Respondent in M.C.No.525 of 2017. He is not an illiterate person, he is a Doctor by profession. Therefore he knows about the complaint. That is why the complaint under Ex.A-1 was not responded by the Police. No CSR and no FIR was registered. No receipt was issued. Apart from the above, the suit filed by the Respondent in M.C.No.525 of 2017 as O.S.No.71 of 2008 seeking to declare the marriage between the



plaintiff and the defendant in O.S.No.71 of 2008 as null and void was dismissed on appreciation of evidence after full trial. That was discussed by the learned VI Additional Judge, Family Court, Chennai while ordering M.C.No,525 of 2017.

14. The learned Counsel for the Respondent in the Revision case, the Petitioner in M.C.No.525 of 2017 had replied to the grounds of revision in Grounds No. 7 and 8 stating that D.W-2 in the suit had categorically deposed regarding the stay of the Petitioner and Respondent in M.C.No.525 of 2017 under one roof by Krishnammal/D.W-2 and also D.W-3/Manimuthu/Ward Boy in Kumaran Hospital regarding the grounds raised in Grounds No. 9 and 10.

15. The learned Counsel for the Respondent submitted that the Respondent in M.C.No.525 of 2017, the Revision Petitioner herein was a Doctor by profession. After sexual intercourse, he has prescribed medicine for the Petitioner in M.C.No.525 of 2017 for abortion. Therefore the grounds raised by him in Para 9 and 10 itself not maintainable. Regarding the ground No.14, the learned Counsel for the Respondent (Petitioner in M.C.No.525 of 2017) states that all the things were arranged by the



Respondent in M.C.No.525 of 2017 himself only to evade creating complaint that may be lodged by the Petitioner in maintenance case.

16. Further he would submit that in 2009, the Respondent in M.C.No.525 of 2017 had married a Doctor and settled in Erode. When the marriage between the Petitioner in M.C.No.525 of 2017 And Respondent itself is subsisting. That was why, the Petitioner in M.C.No.525 of 2017 had preferred C.C.No.21 of 2020 for bigamy against the Respondent in Maintenance Case and is pending on the file of the learned Metropolitan Magistrate Additional Mahila Court, Egmore. The Maintenance Case was not filed by the Petitioner in M.C.No.525 of 2017 with an intention to extract money. Based only on evidence, the learned VI Additional Principal Judge, Family Court, Chennai had ordered maintenance. Also the learned Counsel for the Respondent in the Revision case (Petitioner in M.C.No.525 of 2017) submitted that Grounds 5 and 6 regarding the photograph and proof of marriage was removed by the Respondent in M.C.No.525 of 2017, the Revision Petitioner herein when he was staying in the house as husband and wife. Therefore the photographs could not be produced. The order passed by the learned VI Additional Principal Judge, Family Court, Chennai in M.C.No.525 of 2017 is a well reasoned order and does not



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warrant any interference. The fact that the suit filed by Respondent in M.C.No.525 of 2017, as Plaintiff in O.S.No.71 of 2008 itself is sufficient to pass order by the learned VI Additional Principal Judge, Family Court, Chennai. This Crl.R.C.No.320 of 2021 is to be dismissed as not maintainable. Also he would submit that 2 Revision petitions were filed earlier. Crl.R.C.768 of 2019 against the E.P.No.40 of 2019 was dismissed by the Court. Again this very same Revision Petitioner had filed Crl.R.C.No.383 of 2020 against the interim maintenance ordered by the learned VI Additional Principal Judge, Family Court, Chennai, also was dismissed. As on today, there were 4 E.P.s filed by the Petitioner in M.C.No.525 of 2017, E.P.No.11 of 2020, M.P.No.284 of 2020, M.P.No.375 of 2021 and M.P.376 of 2021. As on date, Rs.7,00,000/- (Rupees Seven lakhs only) is to be paid as arrears of maintenance. The Revision Petitioner herein had paid Rs.30,000/- (Rupees thirty thousand only) by way of cash today (i.e.17.11.2023). Attachment of salary was ordered in M.P.No.284 of 2020, M.P.No.375 of 2021, M.P.No.376 of 2021 and warrant was already issued to garnishee and is pending. This Criminal Revision case lacks merit and is to be dismissed.

Point for Consideration



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Whether this Criminal Revision case is to be allowed and the order passed by the learned VI Additional Principal Judge, Family Court, Chennai in M.C.No.525 of 2017 dated 02.03.2020 is to be set aside as perverse?

17. Heard the learned Senior Counsel for the Revision Petitioner and heard the learned Counsel for the Respondent.

18. On perusal of the evidence of the Revision Petitioner as R.W-1 and the Respondent in the Revision case as P.W-1, the fact that the suit filed by the Revision Petitioner herein as the plaintiff had been dismissed. It is to be noted that the argument of the learned Senior Counsel for the Revision Petitioner stated that the factum of marriage had not been proved. The suit filed by the Revision Petitioner who was the Respondent in M.C.No.525 of 2017 as Plaintiff in O.S.No.71 seeking to declare the alleged marriage between the Plaintiff and the Defendant as null and void and seeking injunction, not to claim as wife of the Plaintiff was dismissed after the trial, based on appreciation of the evidence. The submission of the learned Senior Counsel for the Revision Petitioner that the evidence of D.W-2 and D.W-3 cannot be relied as their evidence in chief as in the cross examination, they had stated that they were aware of the fact prior to 2008



only. whereas disputed as to the factum of the marriage as to the maintenance arose subsequent to 2008. Therefore the evidence of D.W-2 and D.W-3 has to be rejected, based on their cross examination.

19. The cross examination was not pertaining to the factum stated by them in the chief examination. They had denied the suggestion that D.W-2 and D.W-3 were deposing false evidence. In the cross examination, it was suggested that they were not being witness to the marriage. Both of them had admitted that they had not attended the marriage. That cannot be taken for granted that there was no witness to the fact as stated in the examination in chief stated by the D.W-2 that the Plaintiff and the Defendant in O.S.No.71 of 2008 had co-habited under the same roof. D.W-3 had stated that he worked as a ward boy in the very same hospital where the Plaintiff and the Defendant worked and he was aware that they were in a relationship. He had in the cross examination denied the suggestion that he was speaking falsehood. He had admitted that he had not attended the marriage. That cannot be a ground to reject their views. On perusal of the order passed by the learned VI Additional Principal Judge, Family Court, Chennai in M.C.No.525 of 2017, it was found that it was a well reasoned order since it was a summary proceeding. The order is a well reasoned



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order. The learned Judge had drawn adverse inference from the facts available against the Respondent in M.C.No.525 of 2017. The suit filed by him in O.S.No.71 of 2008 was dismissed by the learned VI Additional Principal Judge, Family Court, Chennai as per the judgment dated 02.03.2020 against which the Appeal is pending.

20. On perusal of the cross examination of R.W-1/the Revision Petitioner herein, it was found that he admits, he had filed Crl.O.P. seeking Anticipatory Bail when the Petitioner in M.C.No.525 of 2017 had filed petition for bigamy. He had admitted in cross examination that he had taken her for outing. More than anything, the suit seeking declaration that the alleged marriage between the Defendant and the Plaintiff in O.S.No.71 of 2008, the Revision Petitioner herein as null and void was dismissed on appreciation of evidence itself is relied by the learned Judge to grant the maintenance. Also it is to be noted that the enquiry in Maintenance Case was a summary proceeding where the Petitioner and the Respondent had deposed as witnesses and they were subjected to cross examination. In the light of the materials available in the maintenance case, the learned Judge had arrived at a conclusion that the Petitioner in M.C.No.525 of 2017 is entitled to maintenance. As on the date of passing of the maintenance order,



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dated 02.03.2020, the suit filed before the Family Court in O.S.No.71 of 2008 was dismissed. Therefore naturally, the Petitioner in M.C.No.525 of 2017 is entitled to maintenance.

21. Point for consideration is answered in favour of the Respondent and against the Revision Petitioner. The order passed by the learned VI Additional Principal Judge, Family Court, Chennai in M.C.No.525 of 2017 dated 02.03.2020 is a well reasoned order which does not warrant interference by this Court.

In the result, **this Criminal Revision Case is dismissed**. The learned VI Additional Principal Judge, Family Court, Chennai is directed to proceed further regarding the maintenance in the light of the order passed in M.C.No.525 of 2017 regarding execution of the order.

The Criminal Revision is dismissed as having no merits. Consequently, connected miscellaneous petition is closed.

08.03.2024

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Index : Yes/No

Speaking/Non-speaking order

To

1. The VI Additional Principal Judge,
Family Court, Chennai.
2. The Section Officer, VR Records
High Court of Madras, Chennai – 600 104.



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SATHI KUMAR SUKUMARA KURUP, J.,

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