



CrI.O.P.No.25311 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.O.P.No.25311 of 2024 and

CrI.M.P.No.14182 of 2024

M.Selvam

... Petitioner

Vs.

S.Meena

... Respondent

Prayer: Criminal Original Petition filed under Section 528 of B.N.S.S. to call for records of M.C.No.106 of 2024 on the file of I Additional Family Court, Chennai and quash the same.

For Petitioner : Mr.B.Thirugnanam

ORDER

The respondent herein has filed the maintenance case in M.C.No.106 of 2024 before the I Additional Family Court, Chennai, and on receipt of notice, the respondent therein has filed the present petition before this Court invoking Section 528 of B.N.S.S. to quash the maintenance case.



CrI.O.P.No.25311 of 2024

2. Heard the learned counsel for the petitioner and perused the materials available on record.

3. Since no adverse order is to be passed, notice to the respondent is dispensed with.

4. The case of the petitioner is that the respondent herein has filed a maintenance case before the I Additional Family Court, Chennai, seeking maintenance from the petitioner alleging that she is the second wife of the petitioner. The contention of the petitioner is that respondent herself admitted that it is second marriage for both the petitioner and the respondent. However, there is no averment regarding dissolution of her first marriage. According to the petitioner, the earlier marriage of the respondent is still subsisting and therefore, there is no possibility of second marriage as alleged by the respondent. Hence, the maintenance case filed by the respondent is liable to be quashed.



CrI.O.P.No.25311 of 2024

5. Admittedly, as per the Hindu Marriage Act, when the first marriage is subsisting, the second marriage is not valid. In this case, unless it is proved by the respondent that the first marriage was already dissolved and the second marriage between the petitioner and the respondent took place only subsequent to the dissolution of the first marriage, the respondent is not entitled to any maintenance.

6. However, whether the earlier marriage was dissolved or not, whether the marriage between the petitioner and the respondent is valid or not, and whether the petitioner is liable to pay maintenance to the respondent or not, are all can be decided only by the Family Court after receipt of counter and after thorough enquiry. But the petitioner has not even filed any counter before the Family Court and on receipt of summons itself, he has rushed to this Court by invoking Section 528 B.N.S.S. This Court does not find any grounds to entertain this petition.



Cr.O.P.No.25311 of 2024

7. Therefore, this Criminal Original Petition is dismissed. Consequently,

connected Miscellaneous Petitions are closed.

8. The petitioner is at liberty to work out his remedy before the Family

Court in the pending maintenance case.

04.11.2024

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

ksa-2

To

The I Additional Family Court,
Chennai



WEB COPY



CrI.O.P.No.25311 of 2024

P.VELMURUGAN. J.

Ksa-2

CrI.O.P.No.25311 of 2024

04.11.2024