



Crl.R.C.No.2050 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.08.2024
PRONOUNCED ON : 06.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

**Crl.R.C.No.2050 of 2023
and
Crl.M.P.No.18909 of 2023**

D.Rajan ... Petitioner / Respondent

Vs.

Minor Tamikchiya
Represented by Mother & Natural Guardian
Mrs.Rani W/o.Rajan ... Respondent / Petitioner

PRAYER: Criminal Revision Petition filed under Section 438 r/w 442 of BNSS, to call for the records in F.C.M.C.No.1 of 2022 on the file of the Family Court, Chengalpattu, dated 11.10.2023 and set aside the same.

For Petitioner : Mr.A.E.Ravichandran

For Respondent : Ms.S.Sridevi
Legal Aid Counsel

ORDER

This Criminal Revision has been filed against the order dated 11.10.2023, in F.C.M.C.No.1 of 2022, on the file of the Family Court, Chengalpattu.



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2. Briefly the facts of the case are that the respondent is the minor child, represented by her mother and natural Guardian Ms.Rani. The mother of the Respondent got married with one Nagarajan and they were blessed with three children, out of three children, two children are bedridden immobilized, due to the clot in the brain and one child is a special child. The mother of the respondent and her husband Nagarajan got separated and the respondent's mother was fighting for her survival. At that time, the petitioner approached the mother of the respondent, expressed his willingness to marry her and assured her that he will take care of her and her children. The petitioner further assured that, since his wife is not well and very sick and there is no conjugal physical relationship between them, he will marry her and afterwards he will divorce his wife. Believing the assurance, the respondent's mother married the petitioner on 10.07.2014 at Kaligambal Temple, Chennai and started living as husband and wife. The mother of the respondent got pregnant and delivered a female child on 02.12.2016. Now, the child is aged 6. The petitioner started avoiding the mother of the respondent and the child. The mother of the respondent is unemployed, there is no means for livelihood and minor child is now



suffering due to malnourishment and the minor child need to study.

The petitioner is working as Assistant at the Department of Tourism at the Secretariat, Government of Tamil Nadu and drawing salary of Rs. 52,000/-. Hence, the respondent represented by her mother filed a Maintenance Case in F.C.M.C.No.1 of 2022, on the file of the Family Court, Chengalpattu, to direct the petitioner to pay a sum of Rs.50,000/- towards monthly maintenance for the minor child Tamikchiya, aged about 6. Considering the materials on record and deposition of witnesses, the Family Court, Chengalpattu, came to the conclusion that the petitioner is the father of the minor child Tamikchiya and allowed the petition by directing the petitioner herein to pay a sum of Rs.10,000/- per month as maintenance to the minor girl child from the date of filing of the petition.

3.Mr.A.E.Ravichandran, the learned counsel appearing for the petitioner would submit that the respondent's mother not approached the lower Court with clean hands, she filed the maintenance case with a *mala fide* intention to tarnish the reputation of the petitioner. The petitioner is a Government Servant working in Tamil Nadu State Secretariat and he is living with his wife Vasumathi and two grown up children and the respondent Rani is a friend of his wife Vasumathi and

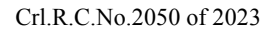


for doing saree business, the respondent Rani requested the petitioner and his wife for a hand-loan and the petitioner availed a loan of Rs.3,00,000/- on 12.10.2018 and handed over the same to the respondent/Rani. For the purpose of saree business of the respondent's mother Rani and at her insistence, a joint account was opened in the names of respondent Rani and the petitioner, and the respondent Rani utilized the business profits for her luxurious life and when the petitioner demanded his money back, the respondent Rani got offended and filed the petition under Section 125 Cr.PC., to threaten the petitioner. The petitioner denied the marriage and questioned the validity of marriage. The respondent's mother should have examined the persons, who attended the marriage. Except Ex.P1, Marriage Invitation, which can be prepared at any time, there is no other evidence on the side of the respondent's mother to prove her marriage with the petitioner on 10.07.2014. Mere filing of Marriage Invitation is not the proof of marriage. The respondent's mother examined herself as P.W.1, who in her evidence has stated that her marriage with Nagarajan was dissolved in a Village Panchayat, but she has not filed any document to prove the same. P.W.1 in her evidence admits that her husband Nagarajan used to visit her house and the marriage of respondent's mother with her husband



Nagarajan is still subsisting and no claim of any marriage can be made. P.W.2 in his evidence has stated that the petitioner and the respondent Rani were residing as tenants in his house and nothing more. He admits there is no Tenance agreement, both petitioner and respondent's mother were tenants during 01.10.2020 to 21.01.2022, there was due to tenancy amount. When questioned the petitioner and demanded the rental due petitioner informed he is no way connected with Rani and refused to pay the rental dues. The entire evidence of P.W.2 is highly artificial and unbelievable.

4. The learned counsel for the petitioner further submitted that when the petitioner denied his paternity of the minor child in his counter, but the lower Court held that the minor child is the legitimate or illegitimate child of the petitioner. Ex.R1 Birth Certificate of the minor child, which was issued on 24.06.2020, is prior to Ex.P2 Birth Certificate issued on 03.02.2021 and in Ex.R1, father name of the minor is mentioned as 'Nagaraj', and the lower Court in holding that the petitioner is the father of the minor child simply relying on Ex.P2, particularly, when the respondent's Mother in her evidence admits that she originally obtained Ex.R1 Birth Certificate and later she substituted the name of petitioner as father of child and obtained



“ 36. The principle underlying Section 112 is to prevent an unwarranted enquiry as to the paternity of the child whose parents, at the relevant time had "access" to each other. In other words, once a marriage is held to be valid, there is a strong presumption as to the children born from that wedlock as being legitimate. This presumption can be rebutted only by strong, clear and conclusive evidence to the contrary. Section 112 of the Evidence Act is based on the presumption of public morality and public policy vide *Sham Lal v. Sanjeev Kumar*, (2009) 12 SCC 454. Since Section 112 creates a presumption of legitimacy that a child born during the subsistence of a marriage is



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deemed to be legitimate, a burden is cast on the person who questions the legitimacy of the child”.

“49. This Court took note of the plea of the Respondent-husband as to non-access at the relevant time, and accordingly opined that it would be a fit case for directing that a DNA test be conducted. Further, in the facts and circumstances of the said case, this Court accepted that a DNA test would be the only way in which the Respondent-husband could establish his plea of infidelity on the part of the Appellant-wife. While upholding the direction of the High Court to conduct DNA test of the minor child, this Court cautioned that if the direction to hold such a test can be avoided, it should be so avoided, and legitimacy of the child should not be put to peril...”

6. Ms.S.Sridevi, the learned Legal Aid Counsel, appearing for the respondent would submit that respondent a minor child represented by her mother and natural Guardian Rani. The mother of the Respondent got married with one Nagarajan, later he left the matrimonial home. At that time, the petitioner approached the mother of the respondent, assured her to marry. Believing the assurance, the respondent's mother married the petitioner on 10.7.2014 at Kaligambal Temple, Chennai and started living as



husband and wife and they are blessed with a female child and the child is aged 6. Now, the petitioner avoiding the mother of the respondent and the child. The mother of the respondent is unemployed, there is no means to livelihood and the petitioner is working as Assistant in the Department of Tourism, Secretariat, Government of Tamil Nadu, drawing salary of Rs. 52,000/-. Hence, the mother of the respondent filed the Maintenance Case in F.C.M.C.No.1 of 2022, on the file of the Family Court, Chengalpattu, claiming a sum of Rs.50,000/- towards monthly maintenance for the minor child Tamikchiya. The Family Court, Chengalpattu, directed the petitioner herein to pay a sum of Rs.10,000/- per month as maintenance to the minor girl. It is further submitted that the maintenance amount has to be fixed considering the status of the parties and therefore, the Family Court not committed any mistake in awarding Rs.10,000/- per month towards maintenance to the minor children. Hence, the learned counsel prayed for dismissal of the Revision.

7. I have heard the learned counsel appearing on either side and perused the materials available on record.



8. The contentions put forth on the side of the Revision Petitioner is mainly on three fold. Firstly, the petitioner denied the marriage with the respondent's mother. Secondly, the minor child Tamikchiya, is not born to him and finally, the amount of Rs.10,000/- towards maintenance, awarded by the Family Court, Chengalpattu, is highly excessive, exorbitant and unreasonable, without taking his account the take home salary of the petitioner.

9. Insofar as the first and foremost contention of the petitioner with regard to denial of marriage with the respondent's mother is concerned, Ex.P1 - Marriage Invitation has been produced on the side of the mother of the respondent's minor daughter. In the Marriage Invitation, the date of Marriage is mentioned as 10.07.2014; the name of 'Bride' is mentioned as 'R.Rani', Daughter of Kumarasamy - Panchavarnam and the name of 'Groom' is mentioned as 'D.Rajan', S/o. Durairaj – Meenakshi and the place of venue is mentioned as Kalikambal Temple, Broadway. Apart from Marriage Invitation, there is no other material produced. It is to be seen 'Kalikambal Temple' is under HR&CE Department. Necessarily, Marriage Payment Certificate will be issued. It is surprising to see no photos produced. It is now common to capture photographs in Mobile Phones no other witnesses examined. As regards the conduct of marriage, P.W.2,



G.K.Gopinathan, owner of the house, where the petitioner and the respondents residing, examined and he deposed that on 26.09.2020, the said Rajan and Rani came with a female child and asked rent a portion of home and they gave an advance of Rs.30,000/- and agreed to give Rs.7,500/- as monthly rent and Rs.200/- for maintenance. But no rental agreement or any other material produced. Added to it, Respondent Rani admits Nagarajan, her husband, her husband, still visits to meet the children. The marriage between Rani and Nagarajan still subsist. Hence, the contention of marriage by Rani with Petitioner cannot be said to be proved, more so, it is admitted by Rani Ex.R1, Birth Certificate Nagaraja's Name recorded as Father of the Baby. This certificate issued on 24.06.2020, but in Birth Certificate Ex.P2 obtained on 03.12.2021, the name of the father substituted with petitioner Rajan name. However, it cannot be said marriage is proved between petitioner and Rani, the trial Court had rightly discarded the issue of marriage between the petitioner and Rani gone further held even if the minor child found to be legitimate or illegitimate, it would be entitled to maintenance.

10. As far as second contention put forth on the side of the petitioner that the minor child Tamikchiya, is not born to him is concerned, Ex.P2 is the Birth Certificate, issued by the Greater



Chennai Corporation and that the father's name is mentioned as Rajan. Though the Birth Certificate is now questioned by the petitioner, P.W.1 produced Ex.P1 Marriage Certificate, Ex.P5 Statement of Account from Canara Bank, a joint account stands in the name of Rani and Rajan. Exs.P7 to P9 show that the respondent's mother purchased house hold articles and jewels and the original bills were marked. The bills were in the possession of P.W.1. It was brought from Nanganallur address. Ex.P11 Identify Card of the child, in which, the name of the father is mentioned as Rajan. Further, P.W.2, is the house owner / landlord, who in his evidence, has deposed that the petitioner and the respondent Rani were residing as tenants in his house. From the documents produced and the witness of P.W.2, it is clear that the child is born to the petitioner and the mother of the 2nd respondent. The petitioner by mere denial in the counter affidavit disowning the child not come forward to subject himself to DNA Test to disprove the paternity. Even in the present Revision, the petitioner has not seriously disputed when there is other clear evidence of cohabitation or living together relationship. The petitioner without DNA test report cannot shred his paternity of the minor respondent, and he is duty bound to maintain the minor. Therefore, the second contention put forth on the side of the petitioner cannot be



accepted.

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11. Insofar as the last contention that the amount of Rs.10,000/- awarded by the Family Court, Chengalpattu,, towards maintenance is highly excessive, exorbitant and unreasonable is concerned, the petitioner is a Government Servant, working as Assistant at Secretariat, Minister for Tourism Government of Tamil Nadu. The petitioner has not produced his salary certificate to prove his salary. It is well established principle of law that while assessing the maintenance amount to be paid by the father to the minor child, Mother Rani of the Minor Tamikchiya in her evidence, minor is studying Class-2 in St.Joseph Matriculation School and marked Exs.10 and P.11. If all other documents are claimed to be self serving documents, there is no reason or explanation given to Ex.P10 and Ex.P.11. The petitioner not seriously disputed his employment and salary of Rs.52,000/-, but makes a claim receiving Rs.12,000/- as take home, after deduction. While considering the maintenance amount, the Court is required to take note of the fact that the amount of maintenance should be for the minor's education and well being and the petitioner is duty bound to maintain the minor. The Family Court, Chengalpattu, has fixed Rs.10,000/- towards maintenance to the minor child, which is in the considered opinion of this Court finds it



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unreasonable, said to be excessive. Hence, Rs.10,000/- per month towards maintenance awarded by the Family Court is modified to Rs.7,500/- p.m. Except the above modification, this Court is not inclined to interfere with the well reasoned order passed by the Family Court, Chengalpattu, in F.C.M.C.No.1 of 2022.

12. In view of the forgoing reasons, this Criminal Revision Case stands dismissed with above modification. No costs. Consequently, the connected miscellaneous petition is also dismissed.

13.The services rendered by Ms.S.Sridevi, Legal Aid Counsel, for respondent, is recorded with appreciation. The Member Secretary, Tamil Nadu Legal Services Authority, is hereby directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand Only) to Ms.S.Sridevi, towards her remuneration, if permissible as per rule or the fee she is entitled.

06.12.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

1.The Family Court,
Chengalpattu,

2. The Member Secretary,
Tamil Nadu Legal Services Authority,
Chennai.



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M.NIRMAL KUMAR, J.

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Pre-Delivery Order made in

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