



Crl.R.C.(MD)No.688 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.06.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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M.Tamilselvi

... Petitioner

Vs.

Mariya Chandrasekar

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and to set aside the order passed by the learned Family Court, Tirunelveli in M.C.No.08 of 2020 dated 20.11.2021 and allow the revision petition.

For Petitioner : Mr.A.Mohamed Hashim

For Respondent : Mr.Muthumalai Raja

ORDER



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The petitioner/wife has filed this Criminal Revision challenging the impugned order passed by the learned Family Court, Tirunelveli in M.C.No.08 of 2020 dated 20.11.2021 against her by which her claim of maintenance has been declined.

2. The marriage between the petitioner and the respondent was solemnized on 07.02.2013. According to the petitioner, the respondent developed illegal intimacy with another lady. This resulted a strife between them and both got separated. Thereafter, he did not brother to take any care about her livelihood and he is working as a driver in TamilNadu State Transport Corporation and he is receiving a salary of R.40,000/- per month and hence she filed above MC claiming monthly maintenance of Rs.20,000/- per month.

3. The respondent filed counter affidavit stating that the petitioner left the matrimonial home without any reason on 15.02.2013 and also stated that the petitioner suppressed her first marriage and also her religion. Hence the petitioner is not entitled to any monthly maintenance.



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4. The Learned Trial Judge has dismissed the petition holding that she suppressed her subsisting earlier marriage and her religion and entered into marriage with the respondent. Aggrieved over the same petitioner has filed this Criminal Revision Petition.

5. The learned Counsel for the petitioner would submit that the earlier marriage of the petitioner was not in force and her husband deserted her long back and the same was informed to the respondent and the respondent knowing well her religion namely Christianity and the separation of her husband agreed to marry the petitioner and lived with her and thereafter he developed illegal relationship with another lady and also took away the gold jewels worth about Rs.1,75,000/-. The said factual circumstance was not properly considered by the learned Trial Judge. He also placed this Court's judgment in Crl.R.C(MD) No. 299 of 2021 dated 15.12.2023 and the Judgment of the Hon'ble Supreme Court reported in 2014 (1) SCC 188 and sought to set aside impugned order and to grant maintenance:

6. The learned counsel for respondent would submit that when the 1st marriage of the petitioner was subsisting, the marriage of the petitioner with the



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respondent is null and void and hence the learned Trial Judge correctly dismissed her Maintenance Claim Petition. Further the learned Trial Judge correctly has held that she also suppressed her religion and married the respondent as per Hindu Customs. Hence there is no merit in this Revision and therefore he sought to dismiss this Revision Petition.

7. This Court considered the rival submission of both side and perused the records and considered the precedents relied upon them.

8. The respondent admitted in his counter and in his evidence that he married the petitioner on 07.02.2013 after the demise of his 1st wife on 31.01.2012. He stated that the petitioner was Christian and she suppressed the same and entered marriage with him. No evidence was adduced to prove his plea that the petitioner was a Christian. In her evidence she specifically stated that she was a Hindu. Therefore the learned Trial Judge gave perverse finding that the petitioner has suppressed the factum of religion.

9. It is the specific case of the petitioner that she had informed the earlier marriage and her separation from the 1st husband and entered marriage with the



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respondent. In her cross examination also she reaffirmed the same. After the death of his 1st wife on 13.01.2012, the respondent entered marriage on 07.02.2013 with the petitioner to take care of his three children born through the 1st wife and lived upto 01.10.2014. Subsequently he had developed illegal relationship with another lady and driven the petitioner out from matrimonial home after usurping her jewels worth of Rs.1,75,000/- He has not filed any petition against her to declare the marriage with the petitioner as null and void on the ground that the marriage took place during the subsistence of the earlier marriage. Further he had also not disputed the fact that they had been living together as a husband and wife and now he cannot be allowed to dispute the marriage and disown the liability. The Respondent cannot be allowed to take a plea that his marriage with the Petitioner without any divorce from her earlier husband is illegal. The said aspect was clearly considered by the Hon'ble Supreme Court in number of cases and the Hon'ble Supreme Court has not entertained the prayer of the husband to disown the liability to pay maintenance.

10. In the case of ***Badshah v. Urmila Badshah Godse***, reported in (2014)

1 SCC 188 Hon'ble Supreme has held as follows:

“13.1.Firstly,in Chanmuniya case [Chanmuniya



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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, 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



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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.”

11.In the case of ***Pyla Mutyalamma v. Pyla Suri Demudu***, reported in **(2011) 12 SCC 189**. has held as follows:

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



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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 usurp the jurisdiction in matrimonial dispute possessed by the civil court. The object of the section being to afford a swift remedy,



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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



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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 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.”

12.Considering the above precedents and the admitted case of respondent that he had entered into marriage on 07.02.2013 with the petitioner and were living together, this court is inclined to hold that the petitioner is entitled to claim maintenance from the Respondent and the Respondent can not be allowed



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to question the validity of the marriage after a long period from the date of the marriage on the ground of the estoppel.

13. In this case the respondent's wife already died and the petitioner's first marriage was ended in failure. After disclosing the earlier marriage only, the petitioner married the respondent. The respondent also admitted the marriage that took place between him and the petitioner and also living with her for one year as husband and wife.

14. In view of the above discussion, this Court is inclined to set aside the order passed by the learned Family Court, Tirunelveli in M.C.No.08 of 2020 dated 20.11.2021. Accordingly, the petition is allowed and the respondent is directed to pay a sum of Rs.5,000/- as monthly maintenance to the petitioner from the date of application

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NCC : Yes/No
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Internet: Yes/No
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To

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



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K.K.RAMAKRISHNAN, J.

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