



Crl.R.C.(MD)No.905 of 2023
and Crl.M.P.(MD)No.11919 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 13.06.2024

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THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C.(MD)No.905 of 2023
and
Crl.M.P.(MD)No.11919 of 2023

R.Joseph Raj

... Petitioner/Respondent

Vs

F.Jansi Rani

... Respondent/Petitioner

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order made in M.C.No.107 of 2018 dated 19.12.2022 passed by the learned Family Court, Tiruchirapalli and set aside the same by allowing this Revision.

For Petitioner : Mr.G.Mathavan

For Respondent : Mr.T.Lenin Kumar

ORDER

This Criminal Revision case has been filed against the order made in M.C.No.107 of 2018 dated 19.12.2022 passed by the learned Family Court, Tiruchirapalli and set aside the same by allowing this Revision.



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2. This Court considered the maintenance application. The petition is not appreciated by this Court. But, this Court considering the pendency of the maintenance petition from the year 2008, is inclined to dispose of this revision on merits.

3. The petitioner's wife has filed a petition before the Family Court, Trichy in M.C.No.107 of 2018, claiming maintenance of Rs.10,000/-. As per the averments in the petition, the petitioner and the respondent, both are divorces and entered the marriage on 11.05.2016. After the marriage, the respondent became pregnant on 08.05.2018. Thereafter, the suspected fidelity of the respondent, and hence, there was some matrimonial dispute. Hence, she stated living separately. Thereafter, the wife filed a petition seeking maintenance.

4. The petitioner filed the counter denying the allegation stated in the maintenance petition. He specifically raised two pleas:

4.1. He disputed the validity of the marriage.

4.2. He disputed the consummation of marriage and hence he seeks the dismissal of the maintenance petition.



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5.To prove the claim of the maintenance, the wife examined herself as P.W.1 and five documents were marked as Ex.P1 to Ex.P5 and the respondent examined himself as R.W.1 and no documents were marked.

6.The learned trial Judge considering the evidence on records granted maintenance of Rs.7,000/- to the petitioner by passing an impugned order. Challenging the same, the husband has filed this revision before the Court.

7. The Learned counsel for the husband has reiterated the grounds taken in the counter and submitted that the marriage was not performed and she was not entitled to claim maintenance.

8. The Learned counsel for the wife submitted that the Learned Trial Judge has considered the evidence adduced before him and accepted the case of the respondent that the marriage took place on 11.05.2016 at St.Motcha Rackini Madha Church Poonthottam, Kajapettai, Tiruchirappalli. In the summary proceedings, the said finding was arrived after consideration of the deposition of the PW1, documents Ex.P1, Ex.P2 and Ex.P4. There is no ground interfere to same.



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9. This court considered the rival submission and perused the records and impugned order.

10. The respondent/ wife deposed that she and the petitioner are divorcees. Both entered into marriage on 11.05.2016 at the St.Motcha Rackini Madha Church Poonthottam, Kajapettai, Tiruchirappalli. Thereafter, she became pregnant on 08.05.2018. He assaulted and kicked the petitioner over her abdomen. Therefore, she was taken to the hospital and undergone termination of pregnancy. Therefore she left the matrimonial home. The petitioner admitted that he issued legal notice under Ex.P4 to divorce her. In the said legal notice, he admitted the marriage. The respondent also produced the marriage invitation Ex.P1 and photo Ex.P2. The only contention is that the marriage was not performed by the Parish Priest and therefore, he denied the validity of the marriage. Validity of marriage is different from the denial of the marriage. In section 125 of Cr.P.C. summary proceedings, this court is not inclined to address the issue of validity of marriage when the abundant evidence is available to accept the case of the respondent that the marriage between her and the petitioner was performed on 11.05.2016 at the St.Motcha Rackini Madha Church Poonthottam, Kajapettai, Tiruchirappalli. The evidence of the wife is cogent and trustworthy. In addition to that in Ex.P4 legal notice issued by the



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petitioner to the wife seeking divorce, admitted the marriage. Therefore, this court is not inclined to accept the case of the petitioner that marriage was not performed and consummated. In the said circumstances the Learned Trial Judge correctly relied the precedents of the Hon'ble Supreme Court laid down in the 1978 (3) SCC 527 and 2011 (1) SCC 141 and has held that when a man and woman are proved to have lived as husband and wife, the law will presume, unless contrary is clearly proved, that they are living in consequence of the valid marriage. Therefore, this court concurs with the finding of the learned trial judge that the petitioner married the respondent on 11.05.2016 at the St.Motcha Rackini Madha Church Poonthottam, Kajapettai, Tiruchirappalli and the respondent is entitled to get maintenance from the petitioner.

11. The petitioner is working in the pest control company and earning Rs. 40,000/- as per month as salary and he also disclosed that he has additional income from rent as his two portion. Considering the same the Learned Trial Judge was granted Rs.7000/- as a monthly maintenance which in the considered opinion of this Court is consonance with the following guidelines issued by the Hon'ble supreme Court in the case of ***Rajnesh v. Neha, reported in (2021) 2 SCC 324:-***

"1. Status of the parties.



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13. In the said circumstances, this Court finds no merits in the petition and the learned trial Judge considering the cost of living and the status of the parties, granted maintenance of Rs.7,000/- and therefore, this Court is not inclined to entertain this revision. Accordingly, this Criminal Revision Case stands dismissed. Consequently, connected miscellaneous petition is closed.

13.06.2024

NCC: Yes/No
Index: Yes/No
Internet: Yes/No
RJR

To

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



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K.K.RAMAKRISHNAN, J.

RJR

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