



Crl.R.C.(MD).No.559 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	23.11.2023
Pronounced On	:	22.02.2024

CORAM
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.559 of 2019

K.Kizar Basha

... Petitioner/Respondent

Vs.

1. Heera Banu

2. Minor Akkifa

Represented by her mother and Guardian

Heera Banu

... Respondents/Petitioners

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the entire records pertaining to M.C.No.40 of 2015 on the file of the Learned Chief Judicial Magistrate, Trichirappalli and set aside the order passed in the above M.C.No.40 of 2015 dated 13.05.2019 and allow the Criminal Revision Petition.

For Petitioner : Mr.C.M.Arumugam

For Respondents : Mr.K.Arunraj



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ORDER

This petition is filed to set aside the order passed in the above M.C.No.40 of 2015, dated 13.05.2019, on the file of the learned Chief Judicial Magistrate, Trichirappalli.

2.The marriage between the petitioner and the first respondent was solemnized on 10.04.2011 and it was second marriage for the petitioner and the first respondent. Out of the wedlock, the second respondent was born on 07.03.2012. At the time of marriage, the parents of the first respondent presided 50 sovereigns of gold jewels to their daughter, 10 sovereigns of gold ornaments to their son-in-law/petitioner and Rs.5,00,000/- as marriage expenses besides Rs.1,00,000/- as dowry on the date of marriage. After the marriage, 42 sovereigns of gold jewels and pattu sarees were received by the petitioner for keeping in his custody. Since the first respondent took long leave of one month for marriage, she was removed from service of the bank. On knowing the same, the petitioner ignored the first respondent stating that he married her only as she worked in bank. When the first respondent became pregnant, she was compelled to cause miscarriage by the petitioner. Thereafter, the parents of the first



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respondent gave Rs.1,00,000/- as cash to the petitioner. The parents of the first respondent prodded the petitioner to heed to their daughter. When the same was refused by the petitioner, the parents of the first respondent took her to Trichy. The petitioner had come to see the first respondent at her parents house only for five times, before the birth of child. The petitioner also pressed her stomach, while she was pregnant to cause miscarriage. Even in the Jamaath they informed to give divorce. But the first respondent and her parents refused to accept the divorce and they tried to solve the problem through relatives and took effective steps for reunion of the first respondent with the petitioner. The petitioner also treated her as a slave and he also suspected the fidelity of the first respondent. On 05.02.2013, the petitioner's parents throw the bag of the first respondent's parents and dresses of the first respondent on street and pushed them out of home and locked the house and left. So the first respondent and her parents came to Trichy. At that time, all the gold ornaments and other household articles were in the custody of the petitioner. Thereafter, the first respondent had filed a case in M.C.No.100 of 2013 and a suit in O.S.No.747 of 2013, seeking for restitution of conjugal rights on the file of the District Munsif Court, Trichy. In which, the maintenance case was compromised in Lok Adalat on 31.08.2013. Subsequently, the petitioner committed cruelty against her and threatened to kill



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her. All the efforts taken by the first respondent's parents for reunion went in vain. Again, the parents of the first respondent took her to Trichy. Thereafter, the first respondent lodged a complaint before the All Women Police Station, Jeeyapuram on 06.03.2015 against the petitioner and his family members and the complaint was not received by the said Police Station. Thereafter, the first respondent gave complaint to the Superintendent of Police and also sent by registered Post and it was forwarded to Jeeyapuram Police Station and on enquiry, the petitioner refused to live with the first respondent. The first respondent also filed petition before this Court in Crl.O.P.No.6651 of 2015 to give direction to take action in respect of her complaint as she is willing to live with the petitioner. Hence, this court referred the matter to Mediation and it ended in vain as the petitioner refused to cohabit with the first respondent. The second respondent was studying L.K.G., in private school at Trichy. The respondents are living with the age old parents of the first respondent. Thereafter, in view of the above strained relationship, the first respondent/wife filed the maintenance claim against the petitioner/husband in M.C.No.40 of 2015 on the file of the Chief Judicial Magistrate, Tiruchirappalli. She further stated that the petitioner is working as an Advocate and earning Rs.50,000/- per month and he also owned house and shops at Ranipettai and earning Rs.30,000/- per



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month through rent. He did not even maintain the respondents and he did not spend for his child's education. In the said circumstances, he is liable to pay the maintenance of Rs.10,000/- to the first respondent and Rs.5,000/- to the second respondent.

3.The husband denied the allegation made by the first respondent and also specifically stated that the marriage between the petitioner and the first respondent was admitted, but the first respondent is not legally wedded wife of the petitioner. The first respondent was already married to one Firoz as admitted by her in maintenance petition and reply notice dated 26.02.2013 issued by her. It is not known to the petitioner whether earlier marriage was dissolved in accordance with customs prevailing in Muslim Community. She did not furnish any details of dissolution of her earlier marriage. Hence, she cannot claim maintenance as legally wedded wife of the respondent. In respect of the jewels, he is not aware of the jewels given by her parents at the time of marriage. When she was pregnant at Chennai, she was taken to doctor by the petitioner and the said doctor told that there was small tumour found in the Feotus and advised the petitioner not to take her in two wheeler for more than 5 kms, at least for three months. When the petitioner was not at home, the first respondent went to



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Trichy by train and she informed that she is going to abort the child as she is not interested in giving birth of the child. He further submitted that she voluntarily left the matrimonial home. Further, she has not discharged her duty as wife. The alleged demand of dowry is not true. The allegations of income of petitioner and rental income are not true. The first respondent is a MBA graduate and she is able to maintain herself and she was bestowed with all capabilities. Hence, he seeks dismissal of the maintenance claim petition.

4.To prove the maintenance, the first respondent/wife examined herself as P.W.1 and marked Ex.P1 to Ex.P.8. On the side of the petitioner, 4 exhibits were marked as Ex.R.1 to R4 and no one was examined.

5.The learned trial Judge considered the evidence and granted maintenance of Rs.5,000/- per month to the first respondent and Rs.3,000/- per month to the second respondent. Totally, the maintenance amount is Rs.8,000/-. The petitioner/ husband who is challenging the maintenance order has preferred this revision.



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6.The learned counsel appearing on behalf of the petitioner submitted that in this case, the parties are Muslims. The first respondent entered into the second marriage with the petitioner on 10.04.2011. Out of wedlock, the second respondent was born on 07.03.2012. The first respondent has not dissolved her earlier marriage in the manner known to law. As per Ex.P.8, the dissolution was taken as per Muslim customs “Khula”. Therefore, the first marriage was not lawfully dissolved and hence, she is not entitled to claim maintenance from the petitioner.

7.Per contra, the learned counsel appearing on behalf of the respondent submitted that the petitioner entered into the marriage with the first respondent after knowing that she dissolved her first marriage with the first husband on 10.04.2011. After the marriage, the second respondent was born on 07.03.2012. Thereafter, he caused cruelty to the first respondent. Therefore, the complaint was lodged. Subsequently, the petition in M.C.No.100 of 2013 for claiming maintenance and a suit in O.S.No.7 of 2014 on the file of the District Munsif Court, Trichy, for restitution of conjugal rights was filed. In the said proceedings the petitioner assured to live with the respondents and also assured that he would redeem all the jewels of the first respondent pledged by him. Subsequently, he



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criminally intimidated the first petitioner and hence, she gave the complaint. In the said circumstances, the petitioner's submission deserves to be rejected.

8.This Court considered the rival submission and also perused the record and the impugned order.

9.The question to be decided in this case is that;

(i)whether the petitioner's contention that the first respondent has no right to claim maintenance from the petitioner, when the first marriage of the first respondent with her first husband had not been dissolved as per law?

10.The issue emerged in this case was already addressed by the Hon'ble Supreme Court in the case of ***Pyla Mutyalamma v. Pyla Suri Demudu***, reported in ***2011 12 SCC 189*** the relevant paragraphs of the judgment are 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



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in Savitaben case [(2005) 3 SCC 636 : 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 : 1988 SCC (Cri) 182 : AIR 1988 SC 644] , 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, and the determination by the Magistrate as to the status of the



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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 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



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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.

11.By applying the above principle, this Court finds no merit in the submission of the learned counsel for the petitioner. It's too late on the part of the petitioner to contend that the marriage between him and the first respondent is void and hence, he is not liable to pay maintenance. In addition to that as per the judgment of the Hon'ble Supreme Court in the case of ***Badshah v. Urmila Badshah Godse***, reported in ***2014 1 SCC 188***, the husband entered into the marriage with the woman with full knowledge of his earlier marriage, subsequently, he cannot be permitted to raise the validity of marriage to deny the claim of maintenance under Section 125 Cr.P.C.



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12. In this case, from the above facts, it is clear that the petitioner married the first respondent on 10.04.2011 with the knowledge that she obtained the divorce with her earlier husband as per the Muslim law on 23.02.2008. Nearly after 2 ½ years, the first respondent family members issued the advertisement in the newspaper to enter into the second marriage. On seeing the same, the petitioner entered into the marriage with the first respondent and received the dowry amount and subsequently, his wife begot the second respondent on 07.03.2012. Thereafter, he is alleged to have received her jewels and pledged the same and caused cruelty to the first respondent. Therefore, she left the matrimonial home and made the police complaint and also Maintenance case in M.C.No.100 of 2013 was filed and O.S.No.41 of 2013 was filed for restitution of conjugal rights and in the said proceedings, the petitioner has agreed to live with her, but, he refused to live and hence, the first respondent filed the maintenance claim. After entering into the marriage and begetting the child and receiving the jewels of the first respondent with an undertaking before the Court in earlier occasion to resume his matrimonial life with the first respondent, now the petitioner cannot be permitted to raise the validity of the earlier dissolution marriage of the first respondent with her first husband in order to defeat the maintenance claim of the first and the second respondents. Therefore, this court



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finds no merit in the revision.

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13. Accordingly, this Criminal Revision Case is dismissed.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

1. The Chief Judicial Magistrate,
Trichirappalli.
2. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

vsg

Pre-delivery Order made in
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