



CrI.R.C.(MD).No.440 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 13.06.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.RC(MD).No.440 of 2024
and
CrI.M.P(MD)No.4694 of 2024

Chinnakutty

... Petitioner/Respondent/
Respondent

Vs.

Mallika

... Respondent/Appellant/
Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records of the order dated 08.12.2022 in CrI.A.No.68 of 2018 on the file of Additional District and Sessions Court, Tenkasi, made against the order in M.C.No.20 of 2008 on the file of the Judicial Magistrate, Tenkasi, for the purpose of satisfying itself as to the correctness, legality and propriety and set aside the same.



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For Petitioner : Mr.A.Raja Mohamed

For Respondent : Mr.R.J.Karthick

ORDER

The Criminal Revision Case is filed challenging the order dated 08.12.2022 in CrI.A.No.68 of 2018 on the file of Additional District and Sessions Court, Tenkasi, made against the order in M.C.No.20 of 2008 on the file of the Judicial Magistrate, Tenkasi.

2.The petitioner/husband filed the revision petition challenging the maintenance order granted in favour of the respondents herein. The respondent herein is the wife. The respondent/wife filed a petition in M.C.No.20 of 2008 before the Judicial Magistrate, Tenkasi, stating that the marriage was solemnized between the petitioner and the respondent on 23.10.1988. After 15 years from the date of marriage, the petitioner is said to have caused cruelty to the respondent. Unable to bear the cruelty, the respondent/wife left the matrimonial home and also made a complaint before the jurisdictional police station, wherein, the petitioner/husband



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undertook to pay maintenance to the respondent/wife. Even after that he did not pay any maintenance amount. Therefore, the respondent/wife filed a petition claiming maintenance.

3.In the maintenance petition, the respondent/wife stated that the petitioner/husband after retirement, received pension and also obtained retirement benefits. From the retirement benefits, he earned more than Rs.25,000/- as interest. Therefore, the respondent/wife sought for a sum of Rs.10,000/- per month as maintenance.

4.The Petitioner/husband filed counter denying all the allegations made in the petition. He also denied the marriage between the petitioner and the respondent and claimed that the marriage was invalid. He specifically took a stand that the respondent married him without valid legal divorce and hence, she is not entitled to get maintenance.

5.To deny the claim of maintenance, the petitioner/husband examined himself as P.W.1 and marked Ex.P1 to P.7. The respondent/wife examined herself as R.W.1 and marked Ex.R1 and R2 to claim maintenance.



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6.The trial Court, considering the above aspects, dismissed the application on the ground that the relationship was not proved and hence, she is not entitled to get maintenance. Challenging the same, the respondent/wife has filed an appeal in CrI.A.No.68 of 2018 before the Additional District and Sessions Judge(FTC), Tenkasi and the same was allowed. Aggrieved over the same, the petitioner/husband filed the present criminal revision before this Court.

7.The learned counsel appearing for the petitioner reiterated the finding of the learned trial judge and specifically submitted that the respondent/wife is not entitled to get maintenance for the reason that she married him without obtaining divorce from her erstwhile husband. In support of his contention, the learned counsel for the petitioner relayed on the judgement of the High Court of Madhya Pradesh in CrI.RC.No.1440 of 2022 and the another judgement in CrI.RC.No.726 of 2017. The learned counsel further relied on the judgement of the Hon'ble Supreme Court in the case of *Pyla Mutyalamma v. Pyla Suri Demudu*, reported in (2011) 12



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SCC 189. On the basis of that, the learned counsel for the petitioner/husband submitted that the respondent/wife is not entitled for maintenance and the same was not properly considered by the learner District Judge. Hence, he prays to allow the revision.

8.The learned counsel appearing for the respondent/wife submitted that the judgement relayed by the learned counsel for the petitioner is not applicable to the present case. In the judgment of the Honourable Supreme Court in *Badshah-Vs-Urmila Badshah Godse and another*, reported in (2014) 1 SCC 188, the entire issue was discussed and held that when the marriage was admitted and if both were living as husband and wife, she is entitled for maintenance in spite of the earlier marriage was not legally dissolved.

9.This Court considered the rival submissions made on either side and perused the materials available on record.



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10. The question arises in this case is that “*whether the petitioner is entitled to estop the status of the respondent after the 12 years from entering the 2nd marriage with the respondent in the year 1988 to deny the maintenance?*”.

11. The respondent had informed about her dissolution of earlier marriage and entered the 2nd marriage with the petitioner on 23.10.1988 and both were living together for more than 12 years as a husband and wife. Due to some dispute, the respondents filed the M.C. petition claiming maintenance. The Learned Trial Judge dismissed the petition. Aggrieved over the same, CrI.A.No. 68 of 2018 was filed on the file of the Additional District and Sessions Court, Tenkasi and the same was allowed by the impugned order. Challenging the same, present revision is filed.

12. Maintenance case was filed in the year 2008. After the maintenance petition, H.M.O.P.No. 18 of 2009 was filed by the petitioner to declare the marriage between the petitioner and the respondent as null and void on the ground that the respondent entered the 2nd marriage with the petitioner without lawfully dissolving her earlier marriage and the same was



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allowed. The Learned Trial Judge taken into consideration of the said H.M.O.P.No. 18 of 2009 order dismissed the maintenance petition with finding that the respondent has not proved that she was the legally wedded wife of the petitioner. But the Learned appellate judge considering the admission of the petitioner that he had entered the marriage with the respondent on 18.05.1999 and he had also not disputed the fact that they had been living together as a husband and wife for past 15 years, he cannot be allowed to dispute the marriage and disown the liability. The petitioner cannot be allowed to take a plea that his marriage with the 2nd respondent that took place in the year 1988 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 be paid as maintenance.

13. 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 v. Virendra Kumar Singh*



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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



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or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to 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.”

14.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



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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 : 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



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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 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,



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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 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



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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.”

15.Considering the above precedents and the admitted case of petitioner that he had entered into the marriage on 23.10.1988 with the respondent and were living together for more than 12 years, this court is inclined to concur with the finding of the Learned Additional District Sessions Judge, Tenkasi in CrI.A.No. 68 of 2018 and the respondent is entitled to claim maintenance from the petitioner and the petitioner is not entitled to question the validity of the marriage after the 15 years from the date of the marriage on the ground of the estoppel.

16.According this Criminal Revision Case is dismissed by confirming the order dated 08.12.2022 in CrI.A.No.68 of 2018 on the file of Additional District and Sessions Court, Tenkasi, made against the order in M.C.No.20



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of 2008 on the file of the Judicial Magistrate, Tenkasi. Consequently, the connected criminal miscellaneous petition is closed.

13.06.2024

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

- 1.The Additional District and Sessions Court,
Tenkasi.
- 2.The Judicial Magistrate,
Tenkasi.
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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and

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03.06.2024