



Crl.R.C.(MD).No.881 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	20.12.2023
Pronounced On	:	19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.881 of 2023

and

Crl.M.P(MD).No.11671 of 2023

Mohammed Ajmeer Ali

... Petitioner

Vs.

Habeeb Nisha

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the impugned order passed in M.C.No.27 of 2021, on the file of the learned Family Court, Dindigul, dated 12.04.2023.

For Petitioner : Mr.N.Marimuthu

For Respondent : Mr.S.Jagadeesh



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ORDER

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The husband of the respondent herein has preferred this Criminal Revision Case, challenging the maintenance, granted in favour of the respondent, in M.C.No.27 of 2021, by the impugned order dated 12.04.2023 on the file of the learned Judge, Family Court, Dindigul.

2. The respondent filed a petition claiming monthly maintenance, stating that the petitioner married her on 29.06.2018 at Vedapatti, Jumma Pallivasal. After the marriage, the petitioner herein filed a suit for divorce in O.S.No.11 of 2020, before the Family Court, Dindigul. The petitioner is having a tea shop, near Dindigul Railway Station and earning a sum of Rs.50,000/- per month. The respondent is unable to earn and she is not able to meet her daily livelihood. Hence, the respondent seeks monthly maintenance of Rs.10,000/- and Rs. 20,000/- for the litigation expenses.

3. The petitioner herein filed a counter denying the liability to pay maintenance, on the ground that the respondent voluntarily left the matrimonial home without any cause. The respondent suppressed her age and entered into marriage with the petitioner and due to that there was no peaceful life. Hence, he



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filed a complaint before the police station on 23.03.2021, pursuant to which, the police officials directed the parties to live together. Even after that there was no reunion and she was not willing to live with this petitioner. Hence, the petition for claim is not maintainable. Further, the petitioner was not running any tea shop and he was struggling for his day to day life without any employment/job. Hence, the petitioner seeks for dismissal of the claim petition.

4.The respondent herein in order to prove the claim of maintenance, she examined herself as P.W.1 and marked Ex.P1 to Ex.P5 and to deny the liability, the petitioner has examined himself as R.W.1 and another witness was examined as R.W.2 and the documents were marked as Ex.R1 to Ex.R9.

5. The learned trial Judge after considering the evidence, awarded for maintenance to the respondent. The learned trial Judge has not accepted the specific plea of the petitioner that the respondent suppressed her age and entered into the marriage with the petitioner at the age of 15 years and there is a dispute regarding the false information, relating to the age, which led to the separation and hence, the petitioner filed a suit for divorce and the same was allowed and therefore, he is not liable to pay maintenance. Without accepting the said



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contention, the learned trial Judge allowed the maintenance claim on the ground that she is entitled to get maintenance and granted a sum of Rs.4,000/-. The learned trial Judge, specifically held that the suit was filed only for divorce and not for declaration as null and void. Therefore, the petitioner is duty bound to maintain his wife as per Section 125 of Cr.P.C. Challenging the said order, the petitioner filed this criminal revision case before this Court.

6. The learned counsel for the petitioner re-iterated the ground and specifically submitted that since the respondent made a false declaration about her age no matrimonial life consummated between them and he separated from her initially. Even after the compromise, the respondent lived with him only for 7 days, totally they have lived together only for 52 days. In the said circumstance, granting maintenance after the divorce on the ground that the petitioner caused cruelty and desertion, the award of maintenance by the impugned order is not legally sustainable. He further submitted that the respondent entered into the marriage with the false declaration about her age. Therefore, she is not entitled to the maintenance. The said marriage is against the provision of the child marriage Act,2006.



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7. The learned counsel for the respondent submitted that the argument of the learned counsel for the petitioner that after divorce, the petitioner is not entitled to get maintenance is against the provision of Section 125 of Cr.P.C. As per Section 125 of CR.P.C., the divorced wife is also entitled for maintenance. He also stated that it is true that the petitioner filed O.S.No.11 of 2020 to dissolve the marriage and not filed for declaration of the marriage as null and void. In the said circumstance, even after divorce was granted, the respondent is entitled to claim maintenance. Further more, aggrieved over the judgment and decree in O.S.No.11 of 2020 she filed an Appeal Suit in A.S.No.102 of 2023 before this Court and the same is pending. In the said circumstances, he seeks for dismissal of this petition.

8. This Court has considered the rival submissions and also the rival precedents relied upon by them.

9. Now, the question to be decided in this case is whether the respondent is entitled to claim maintenance after the divorce was granted by the competent Court?



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10.The said question is no longer *res-integra* on the ground that the provision itself clearly stated even after the divorce was granted by the competent Court, the wife is entitled to maintenance till her re-marriage. It is relevant to extract the Section 125 of Cr.P.C., hereunder:

125. Order for maintenance of wives, children and parents.

(1)If any person having sufficient means neglects or refuses to maintain -

(a)his wife, unable to maintain herself, or

d. a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate

11. The said proviso is interpreted by the Hon'ble Supreme Court in various judgments and held that even the divorced women is entitled to get maintenance on the ground of desertion. In this case, even though the judgment in O.S.No.11 of 2020 is not filed as a document before the trial Court on the account that the decree for divorce was granted on the same day and the maintenance claim was also granted on the same day.

12. This Court perused the judgment passed by the learned trial Judge. The learned trial Judge granted dissolution of marriage. In the said judgment, there



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was no findings relating to the respondent causing any matrimonial offence. In the said circumstances, without any finding that the respondent committed the matrimonial offence, the judgment has been passed for dissolution of marriage. As rightly pointed out by the learned trial Judge he filed the suit for the dissolution of marriage and not as null and void on the ground that the respondent entered marriage by suppressing the age. Even otherwise Husband is not allowed to take the said plea after he contracted marriage with the respondent and was living for considerable period. Therefore, her marriage is against the provision of the child marriage Act, 2006 is stage managed one, in order to thwart the legitimate claim of the respondent. Further, even as per the case, on 26.09.2018, the marriage was performed. There was some discomfort relating to the consummation of marriage. Thereafter, the Jamath people advised compromise and they further advised to them to live together. Even after that they lived together only for 7 days. With the said pleadings, that even during the said 7 days, she refused to co-habit with him and hence there is a cruelty and therefore, he filed the suit for dissolution of decree. From the above facts, it is clear that he created a cause of non-cooperation of the respondent to consummate the marriage and hence the petitioner was unable to live with her and hence, he seeks for the dismissal of the claim petition. This Court has



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considered the above sequence of events and the precedents relied by the petitioner in ***Crl.R.C.No.142 of 2012***. In the said case, the question is whether the wife is entitled to claim maintenance after the competent Court granted decree on the ground that the wife committed adultery. The learned single judge of this Court after considering the facts of that case, held that once the divorce is obtained on the ground of adultery, the wife is not entitled to claim compensation, which is against the provision of Section 125 of Cr.P.C. In this case, there was no such finding by the learned trial Judge. Further it is not the plea of the husband that the wife committed adultery and hence, she was not entitled for the maintenance.

13. In the said circumstances of this case, this Court in the absence any evidence on the side of the husband to disown his liability, concurs with the finding of the learned trial Judge that even after the dissolution of marriage, the wife is entitled to get maintenance. At this stage, it is relevant to note the judgment of the Hon'ble Supreme Court in the case of ***Swapan Kumar Banerjee v. State of W.B.***, reported in ***(2020) 19 SCC 342***. At the risk of repetition, this Court holds when the petitioner admitted the marriage and he had lived with the respondent for more than 52 days, he is liable to pay maintenance.



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14. In view of the above said factual circumstances, this Court is inclined to grant maintenance as directed by the learned trial Judge. In result, this criminal revision case is liable to be dismissed. So far as the amount is concerned, the learned trial Judge granted only a sum of Rs.4,000/-, which is in the considered opinion of this Court is not exorbitant one. The said maintenance amount is reasonable one. Hence, this Court is not inclined to interfere with the quantum also.

15. Accordingly, this Criminal Revision Case stands dismissed. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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K.K.RAMAKRISHNAN, J.

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Pre-delivery Order made in

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