

Crl.R.C.(MD) No.417 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 20.04.2023

Delivered on : 26.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.417 of 2021
and
Crl.M.P.(MD)No.4388 of 2021

Loyola Selva Kumar

... Petitioner

Vs.

1.M.Sharon Nisha

2.Minor.L.Rayon John

...Respondents

(Minor represented through his mother and
natural guardian first respondent)

Prayer : This Criminal Revision has been filed under Section 397(1) r/w 401 of Criminal Procedure Code, to set aside the order passed in M.C.No.26 of 2019 on the file of the Family Court, Tirunelveli, dated 23.03.2021.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.A.Mohamed Hasim



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ORDER

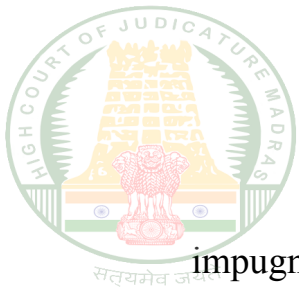
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This Criminal Revision Petition is directed against the order passed in M.C.No.26 of 2019, dated 23.03.2021 on the file of the Family Court, Tirunelveli, granting maintenance.

2. The first respondent, alleging that the marriage between her and the revision petitioner was solemnized on 26.01.2018 at the petitioner's parents home, Sankar Nagar, Tirunelveli and due to their wedlock, the second respondent was born to them; has filed an application claiming maintenance for herself and for her minor daughter under Section 125 of the Code of Criminal Procedure. The revision petitioner has filed counter statement disputing the very marriage and also the paternity to the second respondent and consequently, liability to pay maintenance.

3. During enquiry, the first respondent has examined herself as P.W.1 and exhibited 13 documents as Ex.P.1 to Ex.P.13. The revision petitioner has examined himself as R.W.1 and exhibited one document as Ex.R.1. The learned Judge of the Family Court, upon considering the evidence available on record and on hearing the arguments of both sides, has passed the

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impugned order, dated 23.03.2021, holding that the revision petitioner is liable to pay maintenance to the respondents and directed the revision petitioner to pay a sum of Rs.10,000/- as monthly maintenance for each of the respondents from the date of filing of the petition and the maintenance amount should be paid on or before 5th of every English Calender Month and further directed the revision petitioner to pay the entire arrears of maintenance amount within one month from the date of the impugned order. Aggrieved by the said order, the revision petitioner has come forward with the present revision.

4. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking before the trial Court.

5. The petitioner's case is that the petitioner's parents have given 200 sovereigns of gold jewels, 11 sovereigns of gold minor chain, 5 sovereigns of gold bracelet and one sovereign gold ring were given as dowry as demanded; that they have also provided house hold articles worth Rs.4,00,000/- as demanded by the respondent's parents; that the second petitioner was born on 14.10.2018 at Annai Velankanni Hospital, Palayamkottai; that though the



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respondent was very much affectionate towards the first petitioner initially, due to ill advice of his parents, he started to demand Rs.25 lakhs as dowry; that since the first petitioner failed to fulfill his obligation, the respondent started to avoid the first petitioner by all means; that the first petitioner tolerated all the harassments made by him and his parents considering the future of her marital life; that the petitioner went for her delivery to her parents home in the month of April 2018; that subsequently the respondent avoided the petitioner and failed to maintain her; that though the birth of the second petitioner was informed to the respondent immediately, he has come to the Hospital only after five days; that when the first petitioner asked the respondent as to why he was avoiding her, for which, the respondent openly stated that without giving Rs.25 lakhs as additional dowry, he will not live together with the first petitioner and that because of the act of the respondent , the petitioners are living separately and struggling for their livelihood.

6. It is their further case that the respondent is working in ATG Tyre company, Gangaikondan as Supervisor and is getting more than Rs.50,000/- as monthly salary; that the respondent owns 11 houses in Sankar Nagar and he is getting more than Rs.90,000/- per month as rent and that since the



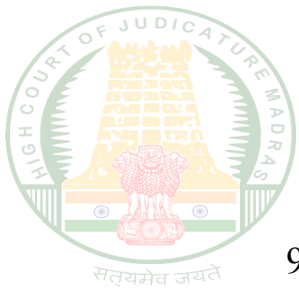
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respondent is legally bounded to maintain the petitioners, the respondent is liable to pay monthly maintenance.

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7. The defence of the respondent is of total denial. The respondent has disputed the very marriage between him and the first petitioner and the paternity to the second petitioner. It is the further case of the respondent that he married one Merlin Rosy on 30.11.2011 and due to their wedlock, they had a child, namely Ivangelin Udhaya; that the petitioner has filed a divorce petition before the District Court, Tirunelveli in I.D.O.P.No.102 of 2014 and after trial, the same was ordered to be dismissed and that the respondent aggrieved by the order of dismissal, has preferred an appeal and the same is pending before this Court.

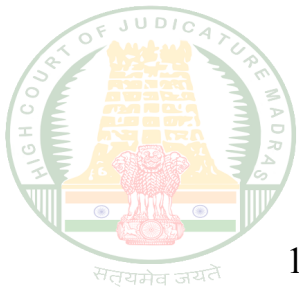
8. It is the specific stand of the respondent that since there was no marriage between him and the first petitioner and there is no relationship between the petitioners and the respondent, he is not liable to for any of the claim.



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9. Regarding his financial status, it is the case of the respondent that he is working at ATG Tyre Company in Sipcot, Gangaikondan; that he is getting monthly salary of Rs.16,000/- and after deduction, gets only Rs.11,500/- in his hands; that the respondent has been paying Rs.7,000/- as maintenance to his first wife and child and that the averments regarding his financial condition alleged by the petitioners are all false and untenable.

10. During cross examination of the respondent, the petitioners have produced the copy of the divorce petition and the judgment passed in I.D.O.P.No.102 of 2014 and the copies of typed set filed in appeal in CMA(MD)No.363 of 2018 before this Court and the same are exhibited as Ex.P.11 and Ex.P.13. It is evident from the records Ex.P.10, Ex.P.11 and Ex.P.13 that the petitioner's application for divorce against his first wife in I.D.O.P.No.102 of 2014, after full trial was ordered to be dismissed on 31.08.2015. Aggrieved by the dismissal of the divorce petition, he has preferred an appeal in C.M.A(MD)No.363 of 2018. Considering the above, it is very clear that the first marriage of the first respondent is still subsisting.



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11. The petitioner has produced the Marriage Invitation, Marriage Photo, Birth Certificate of the second petitioner, Family Card, Aathar Card, Copy of Whatsapp messages sent by the respondent to the first petitioner and cell phone of the first petitioner to prove the alleged marriage between herself and the respondent.

12. No doubt, since the first marriage is still subsisting, the marriage between the first petitioner and the respondent even if proved, cannot said to be valid.

13. The learned counsel for the petitioner would contend that the photographs exhibited cannot be admitted in evidence that the same can only be exhibited through the person, who had taken the photographs; that though the respondent had taken a stand that the photographs were morphed for the purpose of this case, the same was not considered by the trial Court and that whether the photographs exhibited under Ex.P.1 and Ex.P.9 were the correct reproduction of the original and whether it correctly depicts the picture of the location were not at all considered by the trial Court.



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14. Section 14 Family Courts Act reads as follows :

“14.Application of Indian Evidence Act, 1872 - A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872.”

15. At this juncture, it is necessary to refer the decision of this Court in ***Subulakshmi Vs. Amirtharajan*** in ***CRP (PD)(MD)No.386 and 387 of 2021***, dated 06.08.2021, wherein the scope of Section 14 of Family Courts Act, has been dealt with and the relevant paragraphs are extracted hereunder :

“ 9.A cursory reading of Section 14 makes it clear that the intention of the legislature is to permit the Family Court to receive as evidence any report, statement, documents, information or matter, which are in its opinion, would assist the Family Court, to deal effectually with a dispute irrespective of whether the same would otherwise be relevant or admissible under the Indian Evidence Act.



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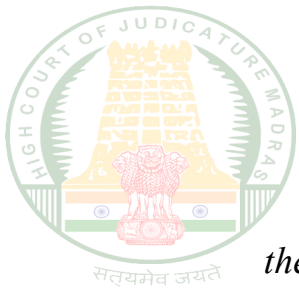
10. Section 20 of the said Act gives an overriding effect to the

WEB COPY *Family Courts Act over the other enactments.*

11. A cumulative reading of Sections 14 and 20 of the Family Courts Act, clearly takes within its ambit the restricted applications of the provisions of the Indian Evidence Act qua the documentary evidence which includes electronic evidence, whether or not the same is relevant or admissible, if in the opinion of the Family Court such evidence would assist the Family Court to deal effectively with the matrimonial dispute.

12. Considering the above, it is clear that the Family Court is empowered and vested with a wide discretion to take note of the evidence in any form such as report, statement, documents, information or matter that may be required to effectively deal with the real controversy in dispute.

13. To put it in other way, the technicalities of Indian Evidence Act relating to admissibility or relevancy of evidence are not strictly applicable in relation to a proceeding under the Family Courts Act touching the matrimonial dispute. Section 14 of the said Act provides for exception to the general rule of evidence regarding admissibility of documents. More over, there was no embargo for the Family Court to accept and exhibit the documents as sought for by the other side. No doubt, it is absolute power and authority of



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the Family Court either to accept or disregard a particular evidence in finally adjudicating the matrimonial dispute. But at the same time, a party would not be prevented from placing some documents on records or such documents can be refused to be exhibited unless they are proved, goes contrary to the object of Section 14 of the Family Courts Act.

14. It is settled law that the objection as to the admissibility of document is classified in to two classes and the first classification is that the documents to be proved is itself inadmissible and the second classification is as to the mode of proof is insufficient. The approach of the Family Court is required to be realistic and rational to the facts on hand rather than technical and narrow.”

16. Considering the above, marking of the photographs by the learned trial Judge cannot be found fault with. Moreover, as rightly pointed out by the learned counsel for the petitioners, when the said photographs were exhibited, no objection was raised by the respondent side. The first petitioner has given evidence with regard to the photographs taken at the time of their marriage and her evidence in this regard was not at all shaken during cross examination.

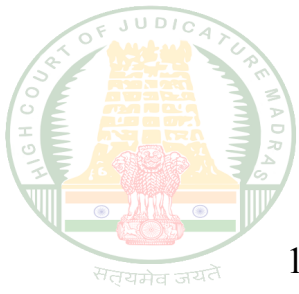


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17. As rightly pointed out by the learned counsel for the petitioners, in Ex.P.4/birth certificate of the second petitioner, the respondent has been shown as the father of the said child. The petitioners have also produced her cell phone and the copies of whatsapp messages sent by the respondent to the first petitioner in Ex.P.8 and Ex.P.12 respectively. Though the respondent in his cross examination would admit that the messages were allegedly sent from his cell phone number, subsequently, he would say that the cell phone was lost two months back. But, as rightly observed by the learned trial Judge, the messages were sent by him during the month of June 2019 and as such, the contention of the respondent that he had lost his cell phone, has loses its significance.

18. It is pertinent to note that when a specific question was put to the respondent during his cross examination as to whether he is ready to take DNA Test to prove the paternity of the second petitioner, he would say specifically that he is not willing to take any such steps.

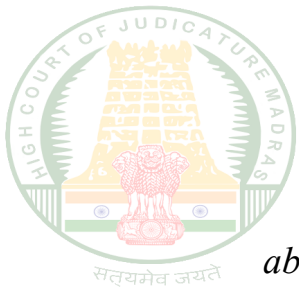


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19. Considering the above evidence, it is evident that the petitioners have proved that the first petitioner and the respondent were living together as husband and wife and due to their relationship, the second petitioner was born to them. At this juncture, it is necessary to refer the judgment of the Hon'ble Apex Court in ***Badshah Vs. Urmila Badshah Godse and another*** reported in ***2014 1 SCC 188 = 2013 (6) CTC 86***, and the relevant passages are extracted hereunder :

15. Firstly, in Chanmuniya case, 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,Cr.P.C. 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,Cr.P.C. On the other hand, in the present case, respondent No.1 has been able to prove, by cogent and strong evidence, that the petitioner and respondent No.1 had been married each other.

16. Secondly, as already discussed above, when the marriage between respondent No.1 and petitioner was solemnized, the petitioner had kept the respondent No.1 in dark

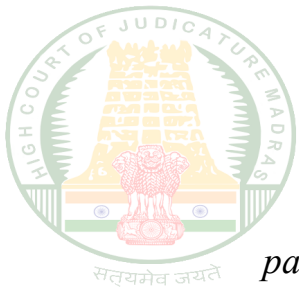


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about her first marriage. A false representation was given to respondent No.1 that he was single and was competent to enter into martial tie with respondent No.1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that respondents are not entitled to maintenance by filing the petition under Section 125,Cr.P.C. as respondent No.1 is not “legally wedded wife” of the petitioner? Our answer is in the negative. We are of the view that at least for the purpose of Section 125 Cr.P.C., respondent No.1 would be treated as the wife of the petitioner, going by the spirit of the two judgments we have reproduced above. For this reason, we are of the opinion that the judgments of this Court in Adhav and Savitaben cases would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the Hindu Marriage Act and therefore she has to suffer the consequences thereof. The said judgment would not apply to those cases where a man marries second time by keeping that lady in dark about the first surviving marriage. That is the only way two sets of judgments can be reconciled and harmonized.

17. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125,Cr.P.C. While dealing with the application of destitute wife or hapless children or



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parents under this provision, the Court is dealing with the marginalized 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. Preamble to the Constitution of India clearly signals that we have chosen the democratic path under 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.

20. As rightly observed by the learned trial Judge, the respondent's deliberate cheating and fraudulent intention can very well be gathered from the stand of the respondent that he did know the first petitioner before filing of the maintenance case and that there was no relationship between him and the petitioners.

21. Considering the above, this Court is of the clear view that for the purpose of Section 125 Cr.P.C, the first petitioner can very well be considered as wife and the second petitioner as the son of the respondent. Hence, the



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finding of the trial Court that the petitioners are entitled to get maintenance from the respondent cannot be found fault with.

22. Now turning to the quantum of maintenance, it is the specific stand of the petitioners that the respondent is working in ATG Tyre Company at Gangaikondan and is getting monthly salary of Rs.50,000/- and that he is owning 11 houses and is getting Rs.90,000/- as rent. But according to the respondent, though he admitted his work in a Tyre company, he is only receiving Rs.16,000/- and after deduction, he is only getting Rs.11,500/- as take home salary. When he was examined with regard to his owning of house properties and getting rent from the said properties, he would say that his father alone was owning the same and he has to get documents from his father.

23. As rightly contended by the learned counsel for the petitioners, the respondent has not specifically disputed the factum of owning houses and leasing out the same to the third parties. Moreover, the respondent has taken a stand that he is getting Rs.16,000/-, he has not chosen to produce salary certificate or pay slip nor taken any steps to sent for the documents from his



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employer to prove his income. As rightly pointed out by the learned counsel for the petitioners, though the respondent has been alleging that the first petitioner is still working, he has not produced any iota of evidence to show that the first petitioner has been working at the time of filing of the case till now.

24. Considering the above and also the present economic scenario and the status of the parties, the fixation of the monthly maintenance at Rs.10,000/- for each of the respondents is very much reasonable and the same cannot be said to be excessive. The revision petitioner has not advanced any other reason or ground to impugn the order. Hence, this Court decides that the revision is devoid of merits and the same is liable to be dismissed.

25. In the result, this Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petition is closed.

26.06.2023

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To

- 1.The Judge, Family Court,
Tirunelveli.
- 2.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

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K.MURALI SHANKAR, J.

das

Pre- delivery order made in
Crl.R.C.(MD)No.417 of 2021
and
Crl.M.P.(MD)No.4388 of 2021

26.06.2023