

Selva Kumar Vs. Atheeswari

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Court : Chennai Madurai

Decided On : Jun-28-2016

Judge : The Honourable Dr. Justice P. Devadass

Appeal No. : C.R.L.RC(MD) No. 165 of 2016 & CrI.M.P.(MD) No. 2387 of 2016

Appellant : Selva Kumar

Respondent : Atheeswari

Judgement :

(Prayer: Criminal Revision Petition is filed, under Section 397 and 401 Cr.P.C., to call for records relating to the order, dated 12.02.2016, made in M.C.No.19 of 2014, on the file of the Family Court, Sivagangai, and set aside the same.)

1. Truth is stranger than fiction. There are many oddities in life. Sometimes they are unbelievable, but in rarity they are believable.
2. In this revision, the revision petitioner challenges grant of Rs.2,500/- as monthly maintenance to the respondent.
3. In M.C.No.19 of 2014, respondent sought for maintenance, under Section 125 Cr.P.C., before the learned Judge, Family Court, Sivagangai.
4. After hearing both sides and perusing the evidence, the learned Judge, Family Court, ordered payment of Rs.2,500/- as monthly maintenance to the respondent.

5. Certain events had taken place in their life. Respondent is born and brought up a Hindu woman. For the sake of the revision petitioner, she embraced Christianity. She become a baptized woman. The revision petitioner took up the stand that he was fooled by her by burking her real age. Actually, she was 17 years older than him. But, she simply duped him by stating that she is only 4 years older than him.

6. The revision petitioner filed I.D.O.P.No.9 of 2012, before the learned District Judge, Sivagangai. The learned District Judge dissolved their marriage accepting the case of the revision petitioner as their marriage has not been consummated on account of the refusal of the respondent.

7. In the maintenance case, the learned Judge, Family Court, Sivagangai considering that the revision petitioner is earning Rs.7,500/- per month, ordered payment of Rs.2,500/- as monthly maintenance to the respondent. Challenging the same, the revision petitioner has directed this revision.

8. According to the learned counsel for the petitioner, the respondent is a cheat. She did not reveal her true age, namely, she is much older than him. So, he cannot be directed to pay maintenance to such a guilty woman.

9. The learned counsel for the petitioner also submitted that without any basis or reason, the respondent has wilfully refused to consummate the marriage. This aspect has been accepted by the learned District Judge, Sivagangai in I.D.O.P.No.9 of 2012. In such circumstances, the learned Judge, Family Court, Sivagangai, ought not to have granted her maintenance.

10. The learned counsel for the petitioner also submitted that the respondent holds B.Ed., degree. She earns by teaching and also by running a S.T.D.Booth. So, she is able to maintain herself.

11. The learned counsel for the petitioner also submitted that there is no basis or material to the effect that the revision petitioner is earning Rs.7,500/- per month.

12. The learned counsel for the petitioner also submitted that the marriage between both has been dissolved by the District Court in I.D.O.P.No.9 of 2012.

13. The learned counsel for the petitioner also submitted that the revision petitioner is already having certain burdens to discharge. He is to take care of his age-old parents.

14. On the other hand, the learned counsel for the respondent submitted that the grounds raised by the revision petitioner are untenable in law. She has no financial capacity and no evidence to that effect was let in. The divorce decree has been stayed by this Court in C.M.A., which is pending.

15. The learned counsel for the respondent also submitted that the revision petitioner is having much financial capacity. But, in order to escape from his liability to pay her maintenance, he has taken inconsistent stand before the District Court in the I.D.O.P., and before the Family Court in the Maintenance Case.

16. I have anxiously considered the rival submissions, perused the impugned order and also the materials on record.

17. As per the evidence of P.W.1, so far as the revision petitioner is concerned, it is a love at first sight. He bent upon marrying her notwithstanding that she is over aged. He threatened to commit suicide, if she declines to marry him and the revision petitioner along with his parents came to her house and expressed their willingness for his marriage with her and thereafter their marriage took place. However, this aspect has been contradicted by the revision petitioner.

18. So far as a maintenance case under Section 125 Cr.P.C., is concerned, what the Court has to see is whether the wife has unreasonably withdrew her from society, whether she has no means to maintain herself and whether the husband had failed and neglected to maintain his wife in spite of having means to maintain her.

19. For the purpose of Section 125 Cr.P.C., the phrase 'wife' includes a 'divorcee' also. Whether the divorce has been obtained by the husband or obtained by the wife it does not matter. A divorcee is also entitled to maintenance.

20. Now, in this case, the revision petitioner took up the stand that the respondent is over aged. This will not be a ground to refuse maintenance under Section 125

Cr.P.C.

21. It is a persistent stand of the revision petitioner that the respondent has refused to consummate the marriage. This has been accepted by the District Court in I.D.O.P.No.9 of 2012 and their marriage was also dissolved.

22. So far as maintenance case under Section 125 Cr.P.C., is concerned, refusal to live may be a ground to deny maintenance, but refusal to consummate the marriage cannot be a ground to deny maintenance.

23. The respondent is stated to be a B.Ed., graduate. This aspect has been stated by the revision petitioner in his I.D.O.P. She is stated to be running a S.T.D.Booth. From her evidence, it transpires that her father runs the S.T.D.Booth. But, there is no material to show that she is running the S.T.D.Booth and earning. She might be a B.Ed., graduate. It is not established that she is working in such and such School and earning so much of amount. By mere holding of qualification, it cannot be said that she is an earning woman.

24. The Trial Court held that the revision petitioner is earning Rs.7,500/- per month by running a mechanical shop. In his evidence before the Family Court, he had stated that he is not owning any mechanical shop, however he is working in a mechanical shop. In this connection, it has been pointed out by the learned counsel for the respondent that in I.D.O.P., the very same revision petitioner took up the stand that actually he is running a mechanical shop. In this respect, one important aspect is that the revision petitioner is a young man. He is not aged. He is hale and healthy. He is not suffering from any ailment. He keeps a robust body. He is having physical capacity to earn money. Thus, he has physical as well as fiscal capacity. So, he has means to earn money.

25. Thus, even after granting of divorce, the respondent is entitled to claim maintenance from the revision petitioner. On and after granting of divorce, the question of the respondent living away from the revision petitioner pale into insignificance. Although the respondent has no independent means to maintain herself, the revision petitioner has means to provide her maintenance. In the present days, due to the cost of living and high inflation, Rs.2,500/- per month to

cover expenses towards food, accommodation, clothing and other necessities of life is not a big amount.

26. In view of the foregoing, this revision fails and it is dismissed. Consequently, connected miscellaneous petition is closed.

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