

**Mahendrarvarman Vs. Ramani and Another**

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**Court :** Chennai

**Decided On :** Aug-26-1992

**Reported in :** 1993CriLJ202

**Judge :** K.M. Natarajan and;N. Arumugham, JJ.

**Appeal No. :** C.A. 800 of 1991 and Crl. M.P. 2058 and 2790 of 1992

**Appellant :** Mahendrarvarman

**Respondent :** Ramani and Another

**Advocate for Def. :** P. Khannan, Adv.

**Advocate for Pet/Ap. :** A.U. Ilango, Adv.

**Judgement :**

**Arumugham, J.**

1. This appeal has been directed against the order of the learned Additional Principal Judge, Family Court Madras in M.C. 160 of 1990 dated 16-11-1990 directing the appellant to pay a monthly maintenance of Rs. 300/- to the first respondent and Rs. 100/- to the second respondent.

2. The case of the respondents who are the petitioners in M.C. 160 of 1990 on the file of the Additional Principal Judge, Family Court, Madras claiming maintenance

from the appellant under section 125 of the Code of Criminal Procedure as culled out from the petition filed in that Court are extracted in brief as follows :

The marriage between the appellant and the first respondent took place at Thiruverkadu on 30-11-1987 in accordance with vedic rites and caste custom and that thereafter both the appellant and the first respondent lived together at the residence of the respondents herein for a period of 1 1/2 years. As a result of the said wedlock the second respondent was born to them and that on the date of filing of the said petition the age of the second respondent was 1 1/2 years and he is now in the custody of the first respondent. While that being so, it was alleged that the appellant used to beat the first respondent and ill-treat her by perpetrating cruelty and violence and demanded money and that finally on 16-2-1989 it was alleged that the appellant left the matrimonial home of the first respondent and he did not return in spite of repeated requests and thereby deserted the respondents without any justifiable cause. Though the appellant was running an Auto Workshop under the name and style of Mahendra Varma Auto Works and was earning a sum of Rs. 3,000/- per month, he had not paid even a single penny towards the maintenance of the respondents and that since the respondents had no means of any kind they were suffering, for their daily livelihood even and since the appellant deserted and neglected to maintain them, it was prayed in the petition that a reasonable amount may be ordered to be paid by the appellant herein. 3. The appellant as respondent in the petition for maintenance had filed a counterstatement in which he inter alia contended and denied the very performance of the marriage with the first respondent by him but admitted that he was the father of the child. He had further contended that he was willing to take the custody of the second respondent and maintain him and that he was not liable to pay any maintenance to the first respondent because she was not his legally wedded wife. He further denied the factum of running Auto Works and earning a monthly income of Rs. 3000/- as alleged.

4. Upon the above rival pleadings, the learned Additional Principal Judge, Family Court, framed the only point as to whether the appellant was liable to pay maintenance to the respondents and if so to what amount and from which date and considered the dispute on merits.

5. Before proceeding to decide on merits, the learned Judge made strenuous effort in reconciling the differences between the parties herein and effect a compromise by patching up of the difference between them but ultimately he could not succeed in bringing about an amicable settlement between the parties as evident from the case records.

6. The first respondent examined herself as P.W. 1 and during her evidence she was firm in claiming that on 30-11-1987 her marriage with the appellant took place in a Mandapam near Thiruverkadu and that thereafter they lived together as husband and wife for about 1 1/2 years in the house of the parents of the first respondent at Pulianthope and as a result of the said wedlock, the second respondent was born and even today, he was in the custody of the first respondent and that on 16-2-1989, the appellant left the family house and deserted both the respondents in spite of repeatedly insisted by the respondents to come and live with them and that consequently for the last about 1 1/2 years, he did not come to see the respondent, nor paid any amount towards maintenance and thereby the appellant had deserted and neglected the respondents. The first respondent further claims that she had no property of any kind nor any income but suffering even for the daily livelihood very seriously and that since the appellant was running a mechanical work shop and deriving an income of Rs. 3,000/- per month and owning a house besides maintaining 2 auto-rickshaws and getting a daily income of Rs. 60/- and living along with his parents, she wanted a reasonable amount towards her maintenance from the appellant. She had further claimed that in the insurance policy taken by the appellant, he had recognised her as his wife and nominated her for the said policy amount which has been marked as Ex. P1 and that Ex. P2 to Ex.P. 4 were the letters addressed to the appellant by his friends, that Ex. P. 5 was the voter census card to show that the appellant was living along with her and her parents and that Ex.P. 6 to Ex.P. 9 were the letters from the Insurance Company. During the cross-examination, the first respondent has firmly denied the suggestion that there was no marriage between her and the appellant herein and that only for a period of one month the appellant was living with her and that barring the above there was no connection of any kind between the appellant and the first respondent. Further, it was admitted that the second respondent is the son born to the appellant herein. She had further denied the

suggestion that the appellant was getting only a sum of Rs. 400/- per month from the work shop which he was running and that as such the appellant was bound and liable to pay maintenance only to the second respondent and not to the first respondent.

7. During the re-examination claiming a photograph with the negative said to have been taken after a month from the date of marriage was marked as Ex.P. 10 through the first respondent. The suggestion on behalf of the appellant that the said photograph was taken without conducting the marriage was stoutly denied by the first respondent.

8. As against the claim and evidence given by the first respondent, the appellant examined himself as R.W. 1 before the Family Court. During his Chief examination he had claimed that there was no marriage performed between him and the first respondent but he had admitted that he had intimacy with the first respondent for about a month and during that time he was attending her at her house and had sexual intercourse with her and that as a result of which the second respondent was born to them. But significantly, he claims that the first respondent was not his wife that therefore he was not liable to pay any maintenance towards her maintenance but was ready to pay maintenance to the second respondent. He would further claim that he was working as auto mechanic nearby his house and getting an income of Rs. 15/- per day and that he was living with his parents. He would further state that he was ready to pay Rs. 50/- per month towards the maintenance of the second respondent.

9. During cross-examination the appellant has denied the suggestion that the marriage between the first respondent and himself had taken place in a Mandapam near Thiruverkadu on 30-11-1987 and that he lived along with the first respondent as husband and wife in her house till he deserted and neglected her on 16-2-1989 and that thereafter he never returned to their family house. He would admit significantly about Ex. P1 in which the first respondent was described as his wife. He would deny the suggestion that Ex. P2 to Ex. P4 were the letters written by his friends and claim that one Sikkander Pasha was not his friend at all. He would disclaim any knowledge about Ex. P5 the voter's census card but at the

same time admits that Ex. P6 to Ex. P9 were the letters addressed to him from the Insurance Company. He would further disclaim any knowledge about Ex. P10 the photograph showing the figures of the appellant and the first respondent therein. He admits Ex. P11 that it was the printed notice given by him and denies the fact that he was getting an income of Rs. 3,000/- per month.

10. Upon the rival pleadings taken by the respective parties herein and having considered the oral and documentary evidence, the learned Additional Principal Family Court Judge held that the first respondent is the wife of the appellant and that the second respondent is the son of the appellant herein and that as the respondents did not have any income of their own and unable to maintain themselves and since deserted and neglected by the appellant who left the matrimonial home about 1 1/2 years ago and refused to maintain them, the appellant became liable to pay maintenance to the first respondent at the rate of Rs. 300/- per month and to the second respondent Rs. 100/- per month effect from 26-4-1990, totalling a sum of Rs. 400/- per mensum to both the respondents herein and thereby allowed the petition filed by both the respondents herein. Against the same, the present appeal has been filed by the appellant under Section 17 of the Family Courts Act.

11. We have heard the arguments of Mr. A. U. Ilango learned counsel for the appellant who among other grounds raised in the grounds of appeal confined his arguments mainly on two points which are the following : Firstly, that the marriage between the appellant and the first respondent has not been established by the petitioner and that as such the first respondent is not entitled to claim any maintenance from the appellant herein and that secondly, since the marriage claimed to have been performed on 30-11-1987 was conducted not in any form as provided under the provisions of the Hindu Marriage Act or the Special Marriage Act, cohabitation if any between the appellant and the first respondent for a shorter period that resulted in the birth of the second respondent would not by itself clothe any right for the first respondent to claim any maintenance under section 125 of the Code of Criminal Procedure.

12. Emphasizing the above two main grounds, the learned counsel for the appellant would contend further that the learned Family Court Judge has ignored the above said two legal aspects and further submitted that the quantum of maintenance awarded and payable by the appellant is quite disproportionate to the income derived by the appellant in order to be sustainable in law.

13. Per contra, Mr. P. Kannan, the learned counsel for the respondents would submit that though there was no clinching evidence tendered by the first respondent to prove the very form of marriage conducted on 30-11-1987 which took place in a Mandapam near Thiruverkadu, the subsequent living of the appellant with the first respondent together in the parent's house and the birth of the second respondent to them would clinch the fact that the living of the appellant and the first respondent for a considerable length of time as husband and wife and begetting the second respondent as evident from the documentary evidence Ex. P1 to Ex. P10 projects the clear circumstance which totally establish the factum that the appellant and the first respondent were living as husband and wife subsequent to their marriage for a period of 1 1/2 years and that thereafter only during the month of February, 1989, he has left the family house and deserted and thereafter refused to come and live with them or paid any amount towards maintenance as alleged and that therefore, the finding recorded by the learned Additional Family Court Judge is perfectly correct within the legal sphere and cannot be assailed as contemplated by law.

14. At this juncture, we have to take note of filing of a petition Cr.M.P. 2058 of 1992 in the above appeal by the appellant himself to receive the income certificate dated 18-7-1991 issued by the appellant's employer as additional evidence in support of the case of the appellant stating that he is receiving only a sum of Rs. 500/- by way of salary. A counter was filed on behalf of the respondents to the petition and through which this petition to receive additional evidence seriously contested and objected. Likewise the first respondent has also filed a petition Crl.M.P. 2790 of 1992 to receive a family card issued to the respondent's family, a colour family photo and a copy of the birth certificate dated 25-7-1989 for the second respondent as additional evidence and for this also, the appellant has filed a counter seriously objecting to receive the said document as additional evidence.

15. Under the circumstances the points that have arisen for consideration are : Whether the respondents 1 and 2 as wife and son of the appellant have proved that they are entitled to claim maintenance from the appellant and whether the parties in this appeal are entitled to lead the additional evidence as prayed for

16. Points 1 and 2 : It is true that there was no evidence either oral or documentary made available in this case with regard to the mode of marriage performed between the appellant and the first respondent on 30-11-1987 in a Mandapam near Thiruverkadu as claimed by the first respondent. Perhaps, taking advantage of this circumstance, the appellant had preferred this specific claim that no marriage between him and the first respondent was performed. But significantly, he admits that he was having intimacy with the first respondent and that he used to go to her house daily and live there and as a result of which the second respondent a male child was born to them and consequently he admits his paternity so far as the second respondent and has expressed his willingness to pay Rs. 50/- per month to the second respondent. But in view of his specific case that no marriage was performed between him and the first respondent, he claims that he was not liable to pay any maintenance to the first respondent. Under the circumstances, we have to see whether the marriage was conducted between the appellant and the first respondent Ex. P1 is the Insurance Policy admittedly taken by the appellant clinches the fact that the first respondent was referred as a nominee as she was the wife of the appellant herein which would make it clear that he has nominated the first respondent as his wife. Ex. P5 is the card prepared by the authorities for the voters' list produced by the first respondent which shows that the appellant herein was described as son-in-law of one Perumal who is the father of the first respondent. In Ex. P5 the address is noted as 27, Bhogipalayam, New lines 4, Park Town and the door number as 166. In all the other documents filed as exhibits addressed to the name of the appellant, the address is noted as 166, Corporation Lane, Pulianthope, Madras 600012. The address given by the first respondent in her petition and claimed was the same one as being No. 166, Corporation Lane, Siva Rao Road, Madras 600012. From the year 1987 to 1989 these documentary evidence namely the letters from the third parties, requiring the appellant to pay the insurance premium and the receipt for the payment of insurance premium, the policy and the photograph, clearly prove that for a period

of 1 1/2 yeas namely from 1987 till February, 1989 the appellant herein and the first respondent were living together as husband and wife in a house situated at Door No. 166, Corporation Lane, Pulianthope, Madras 600012 and that only as a result of which the second respondent admittedly was borne to them.

17. It has to be seen that with regard to the averments made by the first respondent that from February, 1989 onwards only, the appellant had deserted both the respondents herein once and for all and living with his parents in the same street but in different door number, has not been denied specifically by the appellant herein. His only contention advanced before the lower Court was that there was no proof for the marriage between him and the first respondent. But we cannot ignore the admission made by the appellant herein his living with the first respondent during 1987 and that as a result of which cohabitation and joint living the second respondent was born and for whom the appellant has expressed his willingness to pay the maintenance amount. In short, paternity of the second respondent was admitted by the appellant herein. Taking into account all the admitted pleadings of the appellant herein with the documentary evidence projected to by Ex. P1 to EX. P11 coupled with the oral claim of the first respondent, we have no hesitation to hold that the appellant and the first respondent lived together as husband and wife only in pursuance of the marriage performed between themselves in a Mandapam situated near Thiruverkadu and that was the reason why the parents of the first respondent allowed the appellant to live in their house along with the first respondent. It is seen further if no marriage was performed as claimed by the appellant herein it is quite common and natural that the parents of the first respondent would not have allowed the appellant herein to visit their house daily and lead a marital life with the first respondent by having sexual intercourse and to have the second respondent born out of such wedlock. On the other hand, the appellant was allowed freely and as we have observed already, it was clearly established that he was living with the first respondent for quite a long time in their house itself as husband and wife and that was the reason why, he has nominated the first respondent as his wife in the Insurance Policy taken by him. Moreso, the production of the several letters, the Insurance Policy and the receipt for the payment of premium and the other correspondences by the first respondent add further strength to the case of the

first respondent. She was able to do so because she possessed every one of the documents in her house addressed to the name of the appellant herein, and he was living all along with her.

18. In *Vimala v. Veeraswamy* : [1991]1SCR904 the Apex Court he held as follows (at pages 756 and 757 of AIR SCW) :

'Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. Under the Hindu Law a second wife, whose marriage is void on account of the survival of the first marriage is not a legally wedded wife. She is therefore, not entitled to maintenance under section 125. Such a provision in law which disentitles the second wife from receiving maintenance from her husband under section 125, Cr.P.C. for the sole reason that the marriage ceremony though performed in the customary form lacks legal sanctity can be applied only when the husband satisfactorily proves the subsistence of a legal and valid marriage particularly when Section 125 is a measure of social justice intended to protect women and children.' 19. In *Bikash Kumar v. Nanda Rani* : AIR1979 Cal358 the Division Bench of the Calcutta High Court held as follows :

'Where a man and a woman were living together for long time, the man acknowledged the woman's children as his own children and treated the woman as his wife, they were recognised by all persons concerned as man and wife and so described in documents like ration card, voters' list and School Registrar, there is a strong presumption that the woman was the wife of the man and the children were legitimate children. Where the factum of celebration of some form of marriage is established the Court is justified in the circumstances of the case in raising the legal presumption of lawful marriage arising out of long cohabitation and repute. The presumption is a rebuttable presumption.' 20. In the light of the above legal ratios and keeping in view of Section 125 of the Code of Criminal

Procedure and having regard to the tendered oral and documentary evidence in this case by the respective parties herein, we are of the firm view, that the joint living of the appellant with the first respondent as husband and wife even in the house of the first respondent along with her parents and leading a marital life and that as result of which the second respondent was born and that the recognition of the first respondent as his wife in the Insurance Policy by the appellant would lead to the one and only conclusion that the first respondent was the married wife of the appellant herein and that accordingly she has come within the definition of Section 125 of the Code of Criminal Procedure. Further, we may observe that in a case where the claim for maintenance is being projected by and on behalf of the neglected and deserted wife and children against a man for the reason best known to himself alone, requiring strict proof of the marriage with reference to its mode of performance which happened considerably long before may not be taken strictly as a sine quo non in considering the relief being claimed under section 125 of the Code of Criminal Procedure which has been provided only as a social measure to help the neglected wife and children for any reasons.

21. Then coming to the question of quantum of maintenance awarded by the learned Additional Principal Family Court Judge on the basis of the tendered oral evidence in the context of the prevailing spiralling up of prices of commodities at the present day, we do not think that the quantum of maintenance Rs. 400/- per month in total awarded to both the respondents are excessive. It is seen that the claim of the first respondent was that the appellant was living in his parent's house and running an auto works by name Mahendra Auto Works and thereby earning a monthly income of Rs. 3,000/-. Of course, there is no documentary evidence or proof of the details of the income being derived by the appellant herein. But considering the suggestion made to the first respondent during her cross-examination, it was not denied that the appellant did not own any work shop name Mahendra Auto Works but the last document Ex. P11 and the suggestion made to the first respondent by the appellant himself that he was getting only a sum of Rs. 400/- from his work shop clearly demonstrate the fact that he was owning Mahendra Auto Works and getting monthly income even admittedly at Rs. 400/- per month. Therefore, considering the no means position of the respondents one and two and the affordable circumstances and condition of the appellant, we feel

that the quantum of maintenance awarded by the Court below payable by the appellant to his only son and wife is not excessive and the Court below was perfectly correct in recording the finding and awarding the said quantum of maintenance. We have not come across any aspects or any materials brought before us to have a dissenting view from the finding of the learned Additional Principal Family Court Judge, in disposing the above maintenance case.

22. In view of our specific and definite finding given above on the basis of the tendered oral and documentary evidence already, we feel no need to consider the additional evidence now sought for in the above two Criminal Miscellaneous Petitions even assuming it may involve several procedural difficulties involving considerable time. Therefore, we are inclined to reject both the petitions filed by the parties herein for the reception of the documents as additional evidence.

23. In the result, the appeal fails and shall stand dismissed. Both the Criminal Miscellaneous Petitions are also dismissed.

24. Appeal dismissed.

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