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Johnson Vs. Jaya Pushparani and ors.

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Court : Chennai

Decided On : Jan-10-1996

Reported in : I(1997)DMC335

Judge : M. Karpagavinayagam, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 125

Appeal No. : Crl. Revision Case No. 626 of 1996

Appellant : Johnson

Respondent : Jaya Pushparani and ors.

Advocate for Def. : T. Ayyasamy, Adv.

Advocate for Pet/Ap. : S. Shanmugavelayutham, Adv.

Disposition : Petition dismissed

Judgement :

M. Karpagavinayagam, J.

1. This revision by the husband is directed against the order made in M.C. No. 17 of 1993, on the file of Judicial Magistrate No. 2, Pudukkottai, awarding maintenance to the wife/1st respondent herein at Rs. 300/- per month and to the minor son/2nd respondent herein at Rs. 100/- p.m.

2. The wife filed me petition for maintenance in M.C. No. 17 of 1993, before the Judicial Magistrate No. 2, Pudukkottai, stating that both the petitioner and the 1st respondent were living together as husband and wife, even prior to the marriage, which was performed on 23.10.1989 in a Christian Church and registered with the Registrar of Indian Christian Marriages, Pudukkottai, and after the birth of the child, the 2nd respondent herein, the petitioner/husband left the company of the wife and child and neglected to maintain them.

3. The petitioner/husband contested me said maintenance application, contending that there was no intimacy as alleged by the 1st respondent, between them prior to the marriage, and he was not responsible for the birth of the child, that he was forcibly taken by the relations of the 1st respondent, with the help of police and that the marriage was performed only under threat and coercion, and on that ground he filed a suit in Civil Court for declaring the marriage as null and void, which is still pending.

4. The learned Judicial Magistrate, after considering the relevant materials produced by both the parties, had come to the conclusion, that the marriage was solemnised in between the petitioner and the 1st respondent, and the 1st respondent is the legally wedded wife of the petitioner, and the petitioner is the cause for the birth of the minor son/2nd respondent herein. Consequently, the learned Judicial Magistrate directed the petitioner to pay maintenance to the respondents at the rate mentioned above. Aggrieved over the said order, the present revision has been filed by the petitioner/husband.

5. Mr. S. Shanmugavelayutham, learned Counsel for the revision petitioner submitted that the procedures prescribed under the relevant Act, have not been followed, while the alleged marriage was performed between the petitioner and the 1st respondent, and so, the said marriage cannot be said to be valid in law. Learned Counsel also contended that since the suit filed by the petitioner before the Civil Court in the year 1989, for a declaration that the marriage held between the petitioner and the 1st respondent is null and void, is still pending, the 1st respondent/wife cannot claim any maintenance from the petitioner, till the above said issue is decided.

6. Per contra, Mr. T. Ayyasamy, learned Counsel for the respondents, submitted that these points have been elaborately considered by the trial Court, and maintenance has been ordered on the strength of the decision reported in 1986 LW (Cri.) 399 (K.A. Panchapagesan v. K.V. Sridharan), wherein it is held-that 'it is not necessary that the marriage should be established beyond reasonable doubt, and it is enough for the Magistrate that a prima facie case is made out in order to afford the immediate and speedy relief to the suffering party under Section 125 Cr. P.C., while leaving open to the aggrieved party the right to agitate his plea before the Civil Court.

7. Learned Counsel also submits that the validity of the marriage is to be decided only by the Civil Court. Placing reliance on the decision of the Apex Court in Dukhtar Jahan v. Mohd. Farooq, : 1987 CriLJ849 , learned Counsel for the respondents would submit that though 1st respondent/wife conceived even prior to the marriage and the child /2nd respondent herein was born within three months after the marriage, since the wife conceived only due to the cohabitation with the petitioner, with whom the marriage was performed subsequently, the child must be a legitimate child. The relevant observation of the Apex Court in the above referred to decision is as follows :

'To drive home the point, we may refer to some of the reported cases where the Courts have applied the rule of evidence contained in Section ' 112 of the Indian Evidence Act and declared the legitimacy of a child born during wedlock, even though the child had been born prematurely. In Mahbub Ali v. TajKhan, AIR 1915 Lahore 77(2), it was held that a boy born about 7 months after his father and mother were lawfully worried and who had opportunity of access to each other at the time he could have been begotten, must be held to be the legitimate son of his parents. In Khan Singh v. Natha Singh, AIR 1925 Lahore 414, the defendant's father was married to the defendant's mother on 2nd August, 1889 and the defendant was born on 23rd January, 1890. Even so it was held 'that the defendant being born during the continuance of the marriage between his parents, he is his father's legitimate son unless it is shown that his parents had no access to each other at any time when he could have been begotten and that it is immaterial how soon after the marriage the defendant was born. In Sibt

Mohammad v. Md. Hameed : AIR1926 All589 , it was held that Muhammedan child born during the continuance of a valid marriage between its parents but within 6 months of the date of its parents' marriage must be held to be a legitimate child by reason of Section 112 of the Evidence Act.'

8. I have carefully considered the rival submissions made by the respective Counsel, the order of Court below and the relevant authorities cited by the Counsel.

9. It is clear from the records, that the marriage was performed in the Church and the same was registered on 23.10.1989. According to the wife, the 1st respondent herein, the child was born on 13.1.1990. The access between the petitioner and the 1st respondent, before their marriage, was clearly established through the evidence of PWs 1 and 2, due to which, the 1st respondent/wife conceived, well before her marriage. These aspects have been not only spoken to by PW1, the wife, but also by PW2, who is none other than the paternal uncle of the petitioner/husband. On the basis of these materials, the learned Judicial Magistrate has come to the conclusion that the respondents are entitled to maintenance. When these factual findings have been given by the learned Judicial Magistrate, on the meticulous analysis of the evidence, I am not able to persuade myself to interfere with the same, in view of the decision of the Apex Court in the case of Pathumma and Anr. v. Muhammed : 1986 CriLJ1070 .

10. In the result, the revision fails and the same is dismissed, confirming the order of Court below.

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