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CrI.R.C.Nos.1707 & 1709 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2024
PRONOUNCED ON : 31.01.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.Nos.1707 & 1709 of 2023 and
CrI.M.P.Nos.16336 & 16338 of 2023

Ajeesh Kumar S ... Petitioner in both CrI.R.Cs
Vs.

1.Shilaja T R

2.Shreya Ajeesh (Minor) 14 Yrs.,
Rep. by her mother and natural guardian,
No.30 Flat 1/B,
Elliot's Enclave, 4th Main Road,
Besant Nagar, Chennai – 600 015. ... Respondent in both CrI.R.Cs

PRAYER in CrI.R.C.No.1707 of 2023: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set-aside the order dated 24.07.2023 in M.P.No.225 of 2023 in M.C.No.195 of 2021 by the learned IIIrd Additional Family Court at Chennai by allowing the Revision Petition.

PRAYER in CrI.R.C.No.1709 of 2023: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 21.07.2023 in M.P.No.114 of 2023 in M.P.No.731 of 2021 in M.C.No.195 of 2021 by the learned IIIrd Additional Family Court at Chennai by allowing the Revision Petition.

For Petitioner : Mr.Ajay Francis Inigo
For Respondents : Mr.Rahul Jagannathan

COMMON ORDER



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The 1st respondent/wife has filed a petition under Section 128 of Cr.P.C., in M.P.No.225 of 2023 in M.C.No.195 of 2021 before the learned III Additional Principal Judge, III Additional Principal Family Court at Chennai to direct the petitioner/husband to pay the arrears of maintenance from 19.04.2021 to 18.02.2022 for a sum of Rs.10,35,000/- and Rs.50,000/- towards litigation expenses. The learned III Additional Principal Judge *vide* order, dated 24.07.2023 directed the petitioner to pay the arrears of maintenance for a sum of Rs.9,76,200/- to the 1st respondent on or before 14.08.2023. Challenging the same, CrI.R.C.No.1707 of 2023 has been filed by the petitioner/husband.

2.The petitioner has filed a petition in M.P.No.114 of 2023 in M.P.No.731 of 2021 in M.C.No.195 of 2021 under Section 127 of Cr.P.C., r/w 151 of C.P.C., before the learned III Additional Principal Judge, V Additional Principal Family Court at Chennai to cancel the order, dated 16.11.2022 in M.P.No.731 of 2021 in M.C.No.195 of 2021 from the date of remarriage of the 1st respondent i.e., on 22.08.2021 of the interim maintenance amount and also to direct the 1st respondent to pay the litigation cost of Rs.50,000/- to the petitioner. The learned III Additional Principal



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Judge *vide* order, dated 21.07.2023 rejected the petitioner's contention and posted M.P.No.114 of 2023 in M.P.No.731 of 2021 in M.C.No.195 of 2021 along with the maintenance case in M.C.No.195 of 2021. Aggrieved over the same, CrI.R.C.No.1709 of 2023 has been filed by the petitioner.

3.Since the petitioner and the respondents are common in both the Criminal Revision Cases, this Court decides to take up the same together for final disposal.

4.The learned counsel for the petitioner submitted that the marriage between the petitioner and the 1st respondent solemnized on 09.04.2005 at Palliyarakkavu Devi Temple, Vettiyar and the same was registered on 06.06.2008. Out of their wedlock, the 2nd respondent was born on 06.06.2009. During the matrimonial life, the petitioner and the 1st respondent had no cordial relationship and the petitioner suspected the fidelity of his wife, as a result, they got separated. The 1st respondent filed a divorce petition in O.P.No.2165 of 2020 before the Family Court, Chennai on the ground of cruelty and the petitioner filed a divorce petition in O.P.No.1351 of 2021 on the ground of adultery. The 1st respondent filed a



maintenance case in M.C.No.195 of 2021 before the learned III Additional Principal Judge, III Additional Principal Family Court at Chennai, in which, an interim maintenance petition in M.P.No.731 of 2021 also filed. The learned III Additional Principal Judge *vide* order, dated 16.11.2022 directed the petitioner to pay a sum of Rs.30,000/- per month to the 1st respondent and Rs.15,000/- per month to the 2nd respondent towards interim maintenance and Rs.50,000/- towards litigation expenses.

5.He further submitted that the 1st respondent was living adulterous life and she married one Harish Menon on 22.08.2021 during the subsistence of the marriage between petitioner and the 1st respondent. Annoyed over the same, the petitioner filed a private complaint before the learned Judicial Magistrate of First Class, Pattambi, State of Kerala in C.M.P.No.1670 of 2022 against the 1st respondent, Harish Menon and three others. After examining the petitioner and perusing the documents produced, the learned Magistrate *prima facie* satisfied, took cognizance against the said five persons in C.C.No.422 of 2022 for the offence under Sections 494 and 107 r/w 34 of IPC. According to the petitioner, eventhough the divorce proceedings are pending before the Family Court at Chennai. the 1st



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respondent married the said Harish Menon on 22.08.2021 at Panniyur

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Devaswom Sree Varahamoorthi Kshethram, Anakkara Temple at Palakkad

District in Kerala as per Hindu Rites and Customs, which proves adulterous

life of the 1st respondent. The petitioner produced the certificate of marriage

solemnized between the 1st respondent and Harish Menon, dated 08.09.2021,

the temple receipt, dated 12.08.2021, the passport of Harish Menon, in

which, the 1st respondent's name is shown as his spouse and marriage

photographs of 1st respondent and Harish Menon. These four documents

produced in the proceedings in M.P.No.114 of 2023 in M.P.No.731 of 2021

in M.C.No.195 of 2021 and same were marked as Exs.P1 to P4. But the

learned III Additional Principal Judge failed to consider the same and passed

the impugned order, dated 21.07.2023.

6.It is further submitted that the petitioner is ready to pay the interim

maintenance as per the order, dated 16.11.2022 to his minor daughter/2nd

respondent but not to his adulterous wife/1st respondent. The 1st respondent

by her own act disentitled herself for any maintenance or interim

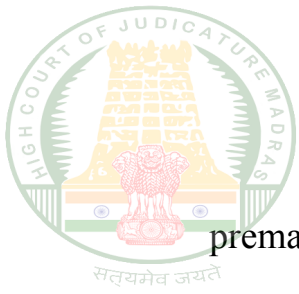
maintenance after 22.08.2021. In this case, the filing of maintenance case is

on 19.04.2021 and the marriage is on 22.08.2021. Though there is some



ration for claiming maintenance, this is also objected by the petitioner for the reason that the adulterous life continued even before the second marriage of the 1st respondent on 22.08.2021. In view of the same, the Court below ought to have modified its order, dated 21.07.2023.

7.The learned counsel for the petitioner further submitted that as per the order, dated 24.07.2023 in M.P.No.225 of 2023 in M.C.No.195 of 2021, the petitioner paid a sum of Rs.1,58,000/- to the respondents towards arrears of maintenance despite the 1st respondent got remarriage even during the subsistence of the first marriage with the petitioner. The Court below dismissed the petition *vide* order, dated 21.07.2023 in M.P.No.114 of 2023 in M.P.No.731 of 2021 in M.C.No.195 of 2021 finding that the maintenance case in M.C.No.195 of 2021 is posted for trial; the documents produced to prove the marriage between the 1st respondent and Harish Menon cannot be taken as conclusive proof and oral evidence is required; the petitioner and the respondents to be given an opportunity to substantiate and deny each others contentions; the evidentiary value of documents cannot be decided without any oral evidence; the veracity of documents would be seen at the time of trial in maintenance case in M.C.No.195 of 2021 and it would be



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premature to decide the points raised by the petitioner. The 1st respondent by filing miscellaneous petitions in the maintenance case is prolonging the same since 2021 and thereby, not allowed the Court below to come to its logical conclusion in the maintenance case and the divorce petition filed by the petitioner on the ground of adultery in O.P.No.1351 of 2021.

8.As per Section 125(4) of Cr.P.C., no wife shall be entitled to receive maintenance or interim maintenance and expense of proceedings from her husband if she is living in adultery. As per Section 127(3) of Cr.P.C., any order has been made under section 125 of Cr.P.C., in favour of a woman, the same shall be cancelled if it is satisfied that woman got remarriage. In this case, the interim maintenance favouring the petitioner's wife/1st respondent to be cancelled. As regards payment of interim maintenance to the 2nd respondent minor daughter, the petitioner is willing to continue to pay the same. The Court below without considering these aspects had dismissed both the petitions despite the petitioner proving the facts. Hence, prays for setting aside the impugned orders, dated 21.07.2023 and 24.07.2023.

9.*Per contra*, the learned counsel for the respondents submitted that



the petition filed by the petitioner under Section 127 of Cr.P.C., r/w 151

C.P.C., is neither maintainable in law nor on facts, interim order passed by the Court below, the petitioner failed to comply with the interim maintenance order, dated 16.11.2022 in full. Hence, the respondents filed a petition under Section 128 Cr.P.C., seeking arrears of maintenance in M.P.No.225 of 2023 in M.C.No.195 of 2021 and the same was ordered on 24.07.2023. He further submitted that the interim maintenance in M.P.No.731 of 2021 in M.C.No.195 of 2021 was ordered on merits and the petitioner was directed to pay Rs.45,000/- per month to the respondents with arrears of Rs.14,40,000/-. The assets and liabilities filed by the petitioner was found to be false since the petitioner not approached the Court below with clean hands. Admittedly, in this case, the interim maintenance passed on 16.11.2022 in M.P.No.731 of 2021 in M.C.No.195 of 2021 has not been challenged by the petitioner. The 1st respondent denied the remarriage with Harish Menon as alleged by the petitioner. Any remarriage under Section 127(3) of Cr.P.C., can be done only after obtaining divorce. So far the divorce has not been granted between the petitioner and the 1st respondent. He further submitted that a criminal case is pending against the 1st respondent, Harish Menon and three others before the learned Judicial



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Magistrate of First Class, Pattambi, State of Kerala in C.C.No.422 of 2022

which is a subject matter to be decided in the trial. In the absence of oral evidence mere marking of Exs.P1 to P4 viz., certificates and photographs, cannot be taken as conclusive proof. The Court below had rightly rejected the petitioner's contention. The prayer in M.P.No.114 of 2023 in M.P.No.731 of 2021 in M.C.No.195 of 2021 is nothing but an order seeking review which is hit by Section 362 of Cr.P.C.

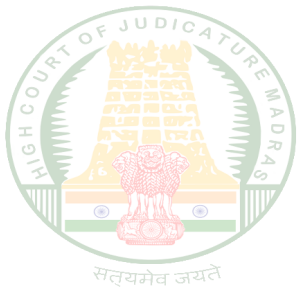
10.The learned counsel further submitted that mere filing of some photographs and documents (Exs.P1 to P4), the petitioner cannot evade and escape from paying the interim maintenance ordered by the Court below in M.P.No.731 of 2021 in M.C.No.195 of 2021 on 16.11.2022. Initially, the petitioner paid some amount and later, failed to make any payments. Filing false assets and liabilities of income has been discussed in detail in the impugned order, dated 21.07.2023 which shows that the petitioner has not come with clean hands. Pointing out the receipts of registration of marriage, dated 11.05.2022 and another receipt, dated 12.08.2021, the learned counsel submits that there are two receipts for Vivaham. The truthfulness and veracity of the receipts has to be decided. Added to it, the receipts were not



signed by any Executive Officer and further, the signature of the Executive Officer found in the marriage certificate is disputed. He further submitted that the photographs and other documents produced by the petitioner would not be sufficient to prove the remarriage of the 1st respondent with Harish Menon. The Court below rightly came to the conclusion that the evidentiary of the documents cannot be decided without any oral evidence and only after the ful-fledged trial, the same can be decided. Assailing these points, the learned counsel for the respondents submitted that both the revisions to be dismissed directing the petitioner to comply with the orders of the Court below.

11. In support of his submissions, the learned counsel for the respondents relied on the following citation for the point that the interim maintenance passed under Section 125 Cr.P.C., by the Family Court or Magistrate Court remains effective up to the final order only and does not decide the rights and liabilities of the parties in finality.

- *Vishal Kochar Versus Pulkit Sahni and another reported in 2022 SCC OnLine Raj 3337.*
- *Dr.Sarika Akshay Ranade Versus Dr.Akshay Arun Ranade reported in*



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2021 SCC OnLine Bom 549.

- *Anshul Kulshreshtha Versus Smt.Swarnima Kulshreshtha @ Soni & Anr., reported in 2018 SCC OnLine Raj 2620.*
- *Chhotu Singh Versus Smt.Basanti & Ors., reported in 2002 SCC OnLine Raj 600.*
- *Swarna Prava Tripathy and another Versus Dibyasingha Tripathy and another reported in 1998 SCC OnLine Ori 56.*
- *Minor Anu @ Atul through his mother Versus Ratan Lal Sharma reported in 1993 SCC OnLine Raj 215.*
- *Sunil Hansraj Gupta Versus Payal Sunil Gupta reported in 1991 SCC OnLine Bom 78.*

12.This Court considered the rival submissions and and perused the materials available on record in detail.

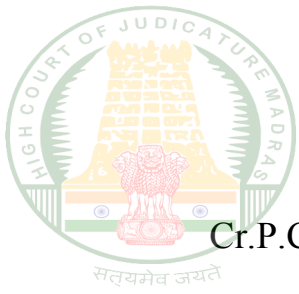
13.It is not in dispute that the petitioner and the 1st respondent got married on 09.04.2005 at Palliyarakkavu Devi Temple, Vettiyar and the marriage was subsequently registered on 06.06.2008 and the 2nd respondent born on 06.06.2009. It is also not in dispute that after the marriage, they got separated and divorce petition filed by the 1st respondent on the ground of cruelty in O.P.No.2165 of 2020 and divorce petition filed by the petitioner



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on the ground of adultery in O.P.No.1351 of 2021. In the meanwhile, a maintenance petition in M.C.No.195 of 2021 has been filed by the respondents. These petitions are now pending for adjudication before the Family Court. During the pendency of M.C.No.195 of 2021, the respondents filed interim maintenance petition in M.P.No.731 of 2021 in M.C.No.195 of 2021 which was ordered on 16.11.2022 in favour of the respondents directing the petitioner to pay monthly maintenance of Rs.45,000/-. Admittedly, the same has not been challenged by the petitioner so far. Thereafter, the petitioner filed a petition under Section 127 of Cr.P.C., r/w 151 of C.P.C., in M.P.No.114 of 2023 in M.P.No.731 of 2021 in M.C.No.195 of 2021 to cancel the order, dated 16.09.2022 in M.P.No.731 of 2021 in M.C.No.195 of 2021 from the date of remarriage of the 1st respondent on 22.08.2021.

14. According to the petitioner, the 1st respondent utmost can claim the maintenance from 19.04.2021 i.e., from the date of filing of the maintenance petition and till the date of second marriage on 22.08.2021. Though this is only on a demanour, according to the petitioner, the 1st respondent was living adulterous life even before her second marriage. In Section 127



Cr.P.C., there are certain contingencies given.

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15.It is seen that in the impugned order, dated 21.07.2023 in M.P.No.114 of 2023 in M.P.No.731 of 2021 in M.C.No.195 of 2021, the Court below had negatived and rejected the petitioner's contention at that stage. In paragraph No.14 of the impugned order, dated 21.07.2023, the findings of the lower Court is as follows:

“14. The petitioner/husband has filed 4 documents in support of his contention. On perusal of the same the first respondent and her daughter are standing in Ex.P.4. Ex.P.1 and P2 are filed to prove the marriage solemnized between the petitioner and the first respondent with one Harish Menon. When the petitioner has filed a petition to question the interim maintenance passed by this Court, it has to be established through oral and documentary evidence. Based on the documents filed by the petitioner alone, this Court cannot come to any conclusion. Without any oral evidence, this Court is unable to come to any conclusion.

Since oral evidence is required to prove the averments made in this petition, call this M.P along with MC by 14.08.2023.”



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16.As the Court below vide impugned order, dated 21.07.2023 posted the miscellaneous petition in M.P.No.114 of 2023 in M.P.No.731 of 2021 in M.C.No.195 of 2021 along with the maintenance case in M.P.No.195 of 2021 for consideration, this Court is not inclined to interfere with the same. Accordingly, the impugned order, dated 21.07.2023 is affirmed and Crl.R.C.No.1709 of 2023 stands dismissed.

17.As regards the impugned order, dated 24.07.2023 in M.P.No.225 of 2023 in M.C.No.195 of 2021 is concerned, this Court comes to the conclusion that the evidentiary value of the documents (Exs.P1 to P4) produced by the petitioner cannot be decided without any oral evidence and the same can be decided only at the time of trial. Accordingly, the impugned order, dated 24.07.2023 is affirmed and Crl.R.C.No.1707 of 2023 stands dismissed.

18.Both the parties are directed to cooperate with the maintenance case in M.C.No.125 of 2021 and in the divorce proceedings filed by the petitioner in O.P.No.1351 of 2021 and the 1st respondent in O.P.No.2165 of 2020. The Court below to complete the above said proceedings within a



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period of four months from the date of receipt of a copy of this order.

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19.It is made clear that the observations made herein is only for the purpose of disposal of the present Criminal Revision Cases. The Court below shall decide the maintenance case and divorce proceedings on its own merits and in accordance with law. The proceedings in C.C.No.422 of 2022 on the file of the Judicial Magistrate of First Class, Pattambi, State of Kerala to proceed independently uninfluenced with this order. The connected Criminal Miscellaneous Petitions are closed.

31.01.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

The III Additional Principal Judge,
III Additional Principal Family Court at Chennai.

Copy To:

The Judicial Magistrate of First Class,
Pattambi, State of Kerala.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDERS IN
Crl.R.C.Nos.1707 & 1709 of 2023

31.01.2024