
(1999) 09 MAD CK 0028

In the Madras High Court

Case No : Criminal R.C. No. 775 and Criminal M.P. No. 6413 of 1999

K. Radhakrishnan

APPELLANT

Vs

Rani alias Eliyarani

RESPONDENT

Date of Decision : 27-09-1999

Acts Referred:

Citation : (2000) CriLJ 3090

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : D. Shivakumaran, for the Appellant; P. Jagadeesan, for the Respondent

Final Decision : Dismissed

Judgement

A. Ramamurthi, J.—The petitioner/husband has filed the revision aggrieved against the order passed in CRP No. 87/97 by the learned II

Additional Sessions Judge, Salem, reversing the order dated 31-5-1994 in M.C. No. 8/94 on the file of learned Judicial Magistrate IV Salem.

2. The case in brief is as follows :-

The respondent was the wife of the petitioner. The marriage between them took place on 12-11-1978. The respondent is only his sister's

daughter. Within six months of the marriage, she developed illicit intimacy with one Jayaraman. Thereafter divorce was effected on 1-2-1997

according to the caste custom prevailing in the community. The petitioner contracted second marriage in 1987 and he is having two children

through the second wife. After the divorce on 1-2-1987 the respondent openly lived with the said Jayaraman till 1994 and thereafter, he also

abandoned her, since the respondent is leading an adulterous life. She is not

entitled to claim any maintenance from the petitioner. The trial Court rightly dismissed the petition filed by the petitioner, but in the revision, the same was allowed and, as such, the order passed by the revision Court is liable to be set aside.

3. Learned counsel for the respondent stated that there is absolutely no evidence to show that the respondent is leading an adulterous life with one Jayaraman. Even assuming that the marriage between the petitioner and the respondent ended in divorce, according to the custom, she is entitled to claim maintenance as long as she has not remarried. If, however, she is leading an adulterous life, it is always open to the petitioner to move the Court for cancellation of the order of maintenance.

4. Heard the learned counsel of both sides.

5. There is no dispute that the marriage between the respondent and the petitioner took place on 12-11-1978 according to the custom prevailing in the community. They lived happily for a period of six months and thereafter, according to the respondent the petitioner ill-treated her and he was also accustomed to drinking. Even, during the subsistence of the marriage, the petitioner is said to have married the second wife viz., Gomathy. The petitioner is employed in the bank and drawing more than Rs. 4000/- p.m. and besides he also owns some other houses. However, learned counsel for the petitioner would contend that on 1-2-1987 the marriage between the petitioner and husband came to an end by customary divorce.

After that, the petitioner got married one Gomathy and similarly the respondent also was living with one Jayaraman till 1994.

6. Learned counsel for the petitioner mainly contended that the respondent is leading in as adulterous life with one Jayaraman and, as such, she is not entitled to claim maintenance. However, the petitioner admitted that he is prepared to pay a sum of Rs. 250/- by way of maintenance to the son, when once the marriage between the parties is admitted and even if there is a customary divorce, the petitioner is bound to maintain the respondent. Now, the stand taken by the petitioner is that she is leading an adulterous life with one Jayaraman and, as such, she is not entitled to claim any maintenance. There is absolutely no legal evidence to come to the conclusion that she is leading an adulteration life. No doubt, D.W. 3 has been examined, but his evidence has not improved the case of the petitioner in

any way. He had only stated that the said Jayaraman used to take the respondent in a cycle. By this, one cannot come to the conclusion that they are leading an adulterous life. Because of this day only, the revision Court came to the conclusion that the respondent is entitled to get maintenance from the petitioner. A sum of Rs. 250/- per month has been ordered by way of maintenance and it cannot be said that the amount is excessive. There is absolutely no illegality or infirmity in the order passed by the revision Court and there is no reason to interfere in the same.

7. For the reasons stated above, the revision fails and is dismissed. Consequently, Crl. M.P. 6413/99 is also dismissed.