

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.1587 OF 2012

ORDER:

The revision petitioner is the sole respondent in M.C.No.245 of 2009. The revision respondent No.1, for herself and minor daughter, in the so-called wedlock with revision petitioner, maintained the M.C.No.245 of 2009, before the Additional Metropolitan Sessions Judge-cum-Judge, Family Court, Hyderabad and after contest in her claim at Rs.25,000/- per month to herself and the minor daughter, the learned Judge, Family Court, on 26.07.2012, awarded maintenance of Rs.3,500/- to her and Rs.5,000/- to the minor child per month, from date of passing the order. Impugning the same, the so-called husband maintained the present revision as referred supra.

2. Heard both sides at length and perused the material on record.

3. The undisputed facts, right from the maintenance claim petition averments are that the M.C. Petitioner No.1 Smt.N.Usha Rani, married one Nomula Srinivas on 30.08.1999 and they resided at Gandhi Nagar, Hyderabad and in their valid wedlock, they blessed with male child by name Sai Ganesh, in and around 2009 and the said Nomula Srinivas went to Malaysia subsequently and Nomula Srinivas

and herself lived even in U.S.A. from December, 2004 to February, 2005 and they came back to India and thereafter differences arose between them and since February, 2005 or so, they are residing separately as even efforts through elders became futile. Even the other averments undisputed are that there was a so-called document of Ex.P.16, dated 25.11.2005, executed between herself and Nomula Srinivas, stating there is no valid marriage between them, however, if there is anything in subsistence, it is dissolving by the memorandum of understanding supra.

4. It is her claim therefrom that thereafter the M.C. sole respondent (revision petitioner), used to approach her under the pretense of dropping the minor boy Ganesh in school and developed intimacy with her and lured her to marry him and there was a marriage between them on 27.11.2004, at Nakrekal and in their wedlock, they blessed with female child, M.C. 2nd respondent by name Venkata Harshini. It is thereby her claim is for entitlement of maintenance.

5. Section 4 of the Hindu Marriage Act, provides the overriding effect of the Act provisions. Undisputedly, it is not even a case of there is any caste custom in prevalence or the provisions of the Hindu Marriage Act are not applicable to them. Once such is the case, as provided by the Act and as laid down in Section 4 of the Act, any dissolution of the marriage or annulment of the marriage is only through court

of law and any agreement or understanding or proceeding outside the court has no legal sanctity, much less to say, including by virtue of Ex.P.16, there from of the marital tie between Nomula Srinivas and the M.C. 1st petitioner - Smt.N.Usha Rani, any way terminated.

6. Once such is the case, whether she and the minor child are entitled to claim maintenance or not concerned, as per Section 16 of the Hindu Marriage Act (as per 1976 amendment), even a child of void marriage is legitimate for all purposes including for purpose of succession, to say including for entitlement of maintenance during minority and till marriage or securing independent means. Here, as per the pleadings and also from the evidence on record, there was a marriage between M.C. 1st petitioner and M.C. sole respondent. Thus, by virtue of the marriage - though void, because of the M.C. 1st petitioner's marital tie with Nomula Srinivas - admittedly in subsistence for not dissolved even from the Ex.A.16, M.O.U., dated 25.11.2005, the child is entitled to claim maintenance, but not by herself as self-infected hardship cannot be taken advantage by any person is also the settled law as one of the fundamental principles.

7. Even from the petition averments and evidence on record of he knowingly married her, for she being wife of Nomula Srinivas of the marital tie in subsistence and

knowingly married the M.C. respondent M.Srinivas, said marriage is once void, she is not getting the status of a wife, but for to consider to the status of the child within the limited scope as laid down in Section 16 of the Act as referred supra.

8. Coming to the M.C. petitioner wants to rely on the expressions of the Apex Court:

(a) ***Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit and another***¹, what the principle laid down therein by the two judge bench of the Apex Court is that strict proof of marriage is not required to claim maintenance in the proceedings under Section 125 Cr.P.C. There is no dispute on the proposition, including to draw any inference from long living together, but for to appreciate with reference to the facts, as each case depends upon its own facts. Here from the very petition averments, the marriage with Nomula Srinivas to the M.C. 1st petitioner was validly performed on 30.08.1999 and from Ex.P.16 - M.O.U., dated 25.11.2005, outside the court there is no valid dissolution of said marital tie and once there is no legal dissolution of the marital tie of her with Nomula Srinivas, even any ceremony of marriage with Moodududla Srinivas (the M.C. respondent) taken place, that does not give sanctity and thereby the decision in ***Dwarika Prasad Satpathy (referred supra)*** has no application to the case on hand.

¹ 2000 Cr.L.J. 1(1)

(b) In **Chanmuniya Vs. Virendra Kumar Singh Kushwaha and another**², where the proposition laid down from the settled expressions is that a long living together gives the presumption to say subsistence of the relation of man and wife and that too there was performance of a marriage ceremony between them from the evidence to give a strong presumption of valid marriage. Here that proposition has no application to the facts, because in the very maintenance claim petition, it is admitted that there is already a first marriage with Nomula Srinivas to the M.C. 1st petitioner in subsistence.

(c) In **Rameshchandra Rampratapji Daga Vs. Rameshwari Rameshchandra Daga**, dated 13.12.2004, a case under Section 25 of the Hindu Marriage Act (for short, 'HMC Act') for permanent alimony from the finality of the proceedings in relation to the matrimonial status in dispute, there is no dispute on the proposition but for to say this decision has also no application to the facts, for not a claim under Section 25 of the HMC Act. This Court even cannot convert the Section 125 Cr.P.C. proceedings as one under Section 25 of HMC Act. Further there is no matrimonial proceedings filed or pending much less disposed of for annulment of the void marriage to invoke Section 25 of HMC Act – vide **Chand Dhawan vs Jawaharlal Dhawan**³.

² (2011) 1 SCC 141

³ (1993) 3 SCC 406

(d) Even from the decision in ***Badsha Vs. Urmila Badsha Godse and another***⁴, in the facts where the husband having a wife already suppressed that factum and married the M.C. petitioner (who was earlier spinister) and it is held there from that once he suppressed the factum of he got a valid 1st wife, she is entitled to maintenance. Here the facts are entirely different. It is not even her case that M.C. respondent got another wife and suppressed the fact and married her. It is her case in fact that she got another husband Nomula Srinivas, with whom marital tie not terminated.

(e) In ***Indra Sarma Vs. V.K.V.Sarma***⁵, of the Apex Court, is the outcome of domestic violence there was a discussion in considering domestic relationship is subsisting or not. There is no any finding in favour of the petitioner to say that despite she got 1st husband from the so-called marriage, against the 2nd husband she is entitled to maintenance or other claims under Domestic Violence Act.

9. Having regard to the above, the awarding of maintenance to her of Rs.3,500/- per month is *per se* unsustainable and is liable to be set aside. Needless to say, her remedy, if any, is either under Section 24 or 25 of the Hindu Marriage Act or to maintain any suit for compensation as one of the arguments advanced in the course of hearing,

⁴ (2014) 1 SCC 188

⁵ 2014 1 NCC (SC) 1

which remedy is elsewhere as discusses supra. So far as child maintenance is concerned, it is upheld as entitled by virtue of the discussion supra.

12. Accordingly, this criminal revision case is partly allowed. Miscellaneous petitions pending, if any, in this case shall stand closed.

DR.B.SIVA SANKARA RAO, J

13.04.2017

*Note: L.R.Copy to be marked.
B/o.SS*

