

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.1321 of 2014

1. Mrs.S.Parveen
2. Minor S.Safreen
3. Minor Yasmeen
4. Minor S.Sayeen

... Petitioner

Vs

1. N.Shameemkhan
2. M.Masthani
3. Meher Taj
4. Sydhani

... Respondents

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code, to set aside the judgment of the 3rd Additional Sessions Judge, Chennai in C.A.No.264 of 2013, dated 08.10.2014, restore the order passed by the 17th Metropolitan Magistrate, Saidapet, Chennai in M.C.No.4158 of 2013, dated 19.11.2013.

For Petitioner : Mr.A.Sirajudeen

For 1st Respondent : Mrs.A.Bharathi
Mr.Camyles Gandhi
(No appearance)

सत्यमेव जयते
O R D E R

On 25.03.2015, the learned counsel for the 1st respondent was absent. Learned counsel for the petitioner was ready. Hence, to give an opportunity, Registry was directed to post this matter today. Today also, there is no representation. Hence, this Court is constrained to dispose of this Criminal Revision Case, considering the materials available on record and after hearing the submission of the learned counsel for the petitioners.

2. Material on record discloses that based on an application, preferred under Section 12 of the Protection of Women from Domestic Violence Act, 2005, filed by the wife and three minor children, the learned 17th Metropolitan Magistrate, Chennai, has taken the case on file in M.C.No.4158 of 2015. In the said petition, the 1st petitioner-wife has contended that the marriage between her and the 1st respondent-husband, was solemnized on 08.01.2001. At the time of marriage, about 10 Sovereigns of Gold, Rs.10,000/- cash and other articles, were given to the respondents. Marriage expenses were incurred by her parents. Out of wedlock, the couple was blessed with three children. With the financial assistance provided by her mother, the 1st respondent/husband has purchased a property at Door No.23, Subulakshmi Nagar, Kundrathur.

3. The 1st petitioner-wife has further submitted that the 1st respondent-husband started to demand more money and caused domestic violence. She was driven away from the matrimonial house and that the in-laws of the 1st respondent-husband abetted the same. It is also her contention that at the instance of the well-wishers, the dispute between the spouses was tried to be sorted out and subsequently, they lived together. But the attitude of the 1st respondent-husband did not change.

4. The 1st petitioner-wife has further contended that during the subsistence of the 1st marriage, the 1st respondent-husband has contracted another marriage, with one Mrs.Meher Taj, 3rd respondent herein. The 1st respondent-husband has willfully neglected to provide maintenance to herself and daughters, who are studying in schools. From the income earned in the real estate business, the first respondent is leading a comfortable life, ignoring his moral and legal responsibility, to provide maintenance to the wife and children, who are living in a rented premises. With the above averments, the 1st respondent-wife, along with her children, has filed M.C.No.4158 of 2013, for the reliefs, under Sections 18 to 21 of the Protection of Women from Domestic Violence Act, 2005.

5. After considering the averments made in the application, filed under Section 12 of the abovesaid Act, by order, dated 19th November, 2013, the learned 17th Metropolitan Magistrate, Saidapet, Chennai, has directed maintenance to the wife and three minor, at the rate of Rs.10,000/- per month. Being aggrieved by the same, the 1st respondent-husband has filed an appeal in C.A.No.264 of 2013, on the file of the learned 3rd Additional Sessions Judge, Chennai.

6. The 1st petitioner-wife has filed a counter, to sustain the interim maintenance. However, having regard to the plea of the 1st

respondent-husband, that the marriage between the parties had already been dissolved by a mutual agreement and also taking note of the counter affidavit of the 1st petitioner-wife, that the correctness of such dissolution agreement, was subject matter of a suit, filed for declaration, before the Family Court, Chennai and further observing that there are decisions in Usman Khan Bahamani vs Fathimunnisa Begum reported in AIR 1990 AP 225, Shaik Dada Saheb vs Shaik Mastan Bee reported in II (1995) DMC 473 and Sadique Ali vs Apar Sessions Naiyai Dheesh reported in II (1995) DMC 222, dealing with the rights of a divorced Muslim woman, wherein, the question of maintenance, is considered, the learned 3rd Additional Sessions Judge, Chennai, has reduced the quantum of maintenance from Rs.10,000/- to Rs.7,500/- per month.

7. Though the learned 3rd Additional Sessions Judge, Chennai, has quoted the abovesaid decisions, prima facie, he has not recorded any finding, as to the entitlement of the 1st petitioner-wife to seek for maintenance. From the impugned order, it could be deduced that the learned 3rd Additional Sessions Judge, Chennai, has considered that a suit has been filed, before the Family Court, Chennai, to declare that the alleged mutual agreement of divorce, as null and void.

8. Children are stated to be minor daughters, studying in Standards UKG, 5th and 7th respectively. To meet out the basic amenities, such as, health, food, clothing, shelter and also the expenses to be incurred for education, cost of books, etc., one may require a reasonable sum. Not to say about the costs of living, escalation in price and such other factors. For girl children, expenses are slightly higher.

9. According to the revision petitioners, they are stated to be living in a rented house. If that be the case, wife has to necessarily meet out the rental expenses, electricity and such other amenities. If a considerable portion of the maintenance amount is spent towards rent, electricity and other expenses, then the remaining amount, can be spent for the welfare of children.

10. In the light of the above, this Court is of the view that a sum of Rs.7,500/- ordered by the 3rd Additional Sessions Judge, Chennai, requires to be revised. Thus, for the reasons, stated supra, this Court is inclined to restore, the original order made in M.C.No.4158 of 2013, dated 19.11.2013, passed by the 17th Metropolitan Magistrate, Saidapet, Chennai. The 1st respondent-husband is directed to pay the balance arrears amount of maintenance, at the rate of Rs.10,000/-, after deducting the amount already made, within a period

of one month, from the date of receipt of a copy of this order. The 1st respondent is also directed to continue to pay maintenance to the respondents, at the rate of Rs.10,000/- each, per month, on or before 5th of every English Calender month and continue to pay the same, till the disposal of the suit. The learned 17th Metropolitan Magistrate, Saidapet, Chennai, is directed to dispose of M.C.No.4158 of 2013, within a period of three months, after providing a reasonable opportunity to both the parties.

11. With the above directions, the Criminal Revision Case is allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm

To

1. The 3rd Additional Sessions Judge,
Chennai.
2. The 17th Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to Mr.A.Sirajudeen, Advocate, S.R.No.17246

Cr1.R.C.No.1321 of 2014

BR(CO)
CA(20/04/2015)

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