

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2015

CORAM

THE HON'BLE MR.JUSTICE S. MANIKUMAR

Criminal Revision Petition No.316 of 2014

M.P.Nos.1 and 2 of 2014

Mr.Paston J.David Ponarj

.. Petitioner

Vs.

1. Mrs.Sheela Ebinezar

2. Minor Ida Johanna

(rep by her mother and guardian

Mrs.Sheela Ebinezar)

... Respondents

Prayer:- Petition filed under Section 397 r/w. 401 of Cr.P.C, praying to set aside the order dated 30.08.2012, made in M.C.No.15 of 2010, on the file of the learned Judicial Magistrate, Tambaram.

For Petitioners : Mr.D.Saravanan

For Respondent : Mr.S.Ashok Kumar

O R D E R

Order in M.C.No.15 of 2010, dated 30.08.2012, on the file of the learned Judicial Magistrate, Tambaram, directing payment of maintenance at Rs.5,000/- and Rs.7,000/- to the respondents-wife and minor daughter, respectively, from the date of filing of the Maintenance Case, i.e., 25.03.2010 till 30.08.2012, to be paid within a period of three months, from 30.08.2012, is challenged in this revision.

2. Case of the 1st respondent-wife is that the marriage between herself and the petitioner was solemnised on 16.05.2008, at ESI Grace Church, Chrompet, Chennai. At the time of marriage, her family members gave a dowry of Rs.15,000/- and 20 Sovereigns of gold jewellery, along with household articles, like bureau, cot, etc. Marriage expenses of Rs.1,00,000/- was met by her family members. She entered the matrimonial home with great expectations. Matrimonial home was set up at Madurai. The petitioner-husband stayed at Tenkasi. Whenever, the 1st respondent insisted the petitioner to take her to Tenkasi, he never heeded to her request. Father-in-law of the 1st respondent exceeded his limit, which put her in delicate situations. After a long struggle, the petitioner took her to

Tenkasi. The petitioner started to act differently and the 1st respondent has become a puppet at the hands of the petitioner. In the month of August, the 1st respondent became pregnant. She was not taken to the hospital for regular check-up. When her mother came to Tenkasi, the petitioner has become furious and abused her with unparliamentary words. Child was born on 07.04.2009. As there was no proper care, she was constrained to come down to her mother's house at Chennai, on 23.04.2009. Since then, the petitioner never came to Chennai to see the child. The petitioner did not pay maintenance to the wife and child. Thereafter, containing false allegations, he sent a legal notice, dated 10.01.2010 to the 1st respondent. Reply, dated 02.02.2010, was sent. Thereafter, the petitioner has filed I.D.O.P.No.6 of 2010, for restitution of conjugal rights. According to the 1st respondent-wife, she has no means to maintain herself and minor daughter. The petitioner-husband, as Pastor, was earning Rs.35,000/- per month. She has prayed for maintenance for herself and minor daughter, at the rate of Rs.5,000/- per month.

3. The petitioner-husband, in his counter affidavit, has admitted that the marriage was solemnised on 16.05.2008, at Evavangelical Church of India, Chrompet, Chennai. A female child was born on 07.02.2009, at Annai Hospital, Tenkasi. According to him, after the delivery, the 1st respondent-wife left the matrimonial home along with her mother, without informing him and she also taken the entire belongings to Chennai. He has denied the allegations levelled against him. On the contrary, it is the case of the petitioner that the 1st respondent-wife insulted and ill-treated him, through out his life. Despite intervention of the elders, there was no change in the attitude of the 1st respondent-wife. She did not come to Tenkasi. Therefore, the petitioner was constrained to send a legal notice on 12.01.2010, calling upon the 1st respondent-wife to come and live with him, at Madurai. A negative reply was given. Hence, the petitioner was constrained to file I.D.O.P.No.6 of 2010, before the Family Court, Madurai, for restitution of conjugal rights. She was absent and hence, on 30.07.2010, an ex parte decree was passed by the Family Court. In spite of the decree, the petitioner has failed to return. Therefore, the petitioner was constrained to file I.D.O.P.No.51 of 2010 on 13.09.2010, for dissolution of marriage, which was solemnised between the petitioner and 1st respondent on 16.05.2008. The first hearing was on 13.10.2010 and though summons was sent to the 1st respondent, she did not appear, but choose to file M.C.No.15 of 2010, before the learned Judicial Magistrate Court, Tambaram, for maintenance. The petitioner has contended that on her own volition, the respondent-wife, left the matrimonial home, without any reasonable cause and withdrawn from his society. Therefore, the petitioner has submitted that he had never neglected to provide maintenance, but it is the 1st respondent-wife, who had left the matrimonial home, on her own accord and hence, not entitled to

maintenance. According to him, she has sufficient means to live on her own and that is why, she had not returned to the matrimonial home.

4. Before the learned Judicial Magistrate, Tambaram, as PW1, wife has adduced oral evidence. She has marked Ex.P1, Marriage Invitation, Ex.P2, Marriage Photograph, Ex.P3, Marriage certificate, Ex.P4, Birth Certificate of the child, Ex.P5, Ration Card, Ex.P6, Notice sent by the husband and Ex.P7, reply of the wife. RW1, is the husband/petitioner. He has marked Ex.R1 dated 29.07.2010, letter sent to the Bishop, Ex.R2 dated 12.11.2010, copy of the petition and order in IDOP No.6 of 2010 and Ex.R3 dated 30.03.2010, Exparte order in IDOP No.6 of 2010.

5. Marriage has been performed on 16.05.2008 at ECI Grace Church, Church Road, Radha Nagar, Chrompet, Chennai. A child was born. According to the respondent/wife, after marriage petitioner/husband lived with her, at Madurai only for three months and thereafter, gone to Thenkasi. Her father-in-law, had interfered in many matters and expected her to act according to his wish. When the couple was living at Thenkasi, husband caused several problems and therefore, she was constrained to prefer a complaint to Thenkasi Police station.

6. At this juncture it should be noticed that the Court below, in its judgment has categorically recorded that the respondent/wife had admitted that there was an enquiry at Thenkasi Police Station. Though, respondent/wife has contended that due to neglect and unable to maintain herself, and the child, she returned to her parents house at Chennai, it is the case of the petitioner/husband that she had deserted him on her own, without any just cause and in order to have a peaceful life, he filed IDOP No.6 of 2010 on the file of the learned Judge, Family Court, Madurai, for restitution of conjugal rights. Upon perusal of the contents of Ex.P5, reply notice sent by the wife for restitution of conjugal rights, the Court below has found that the respondent/wife had agreed to live with him, at any place except Madurai.

7. PW2, Mother of the wife has deposed that during pregnancy, when the petitioner/husband, failed to take his wife to the hospital for treatment, she had to go Thenkasi. She has also deposed that there was no conducive atmosphere for the daughter to live in her in-laws house, at Madurai. She has also supported the version of respondent/wife that a complaint was given to the police station. In addition to the above, she has also stated that petitioner/husband was only acting, as per the directions of his father and failed to take care of his wife. According to PW2, petitioner/husband is under the control of his father.

8. After considering the evidence adduced, by both parties the Court below has observed that the petitioner/husband did not know even the name of the child. Testimony of PW1/wife that she and her child were not paid any proper maintenance is also supported by PW2.

9. Though, the petitioner/husband has placed reliance on an order in IDOP No.6 of 2010 on the file of the learned Judge, Family Court, Madurai and contended that inspite of the decree for restitution of conjugal rights, wife/respondent disobeyed the order and thus, there is no willful neglect and that the respondent left the matrimonial home, without a just cause has been proved and in the abovesaid circumstances, he is not liable to pay any maintenance to the wife and child, the Court below upon analysis of the evidence adduced by PWs 1 and 2, has prima facie found that due to the acts and deeds of the petitioner/husband, a police complaint was given and that there was also an enquiry. By observing that there was justifiable cause for the wife to live separately and holding that petitioner/husband has failed to provide maintenance to the wife and child, the Court below has ordered the same to be paid. However, on the quantum of maintenance though, the petitioner/husband has contended that the wife, a graduate in Nursing was earning Rs.10,000/- and thus had sufficient means to maintain herself and child, considering the evidence, the Court below has observed that except oral testimony, no positive supportive evidence was produced.

10. Petitioner/husband is stated to be a Pastor. Wife's father is also stated to be a Pastor. For denial of maintenance to wife and child, petitioner/husband has contended that his father-in-law, as pastor was earning Rs.50,000/- and therefore, wife has means to maintain herself and child. Even in the cause title in the present revision petition, the petitioner has been described as Mr.Pastor J.David Ponraj, Madurai.

11. When the matter came up for hearing, an attempt was also made to amicably settle the disputes, but it was not successful. Factum of the petitioner being engaged as Pastor alongwith his father, was admitted by him. During enquiry, he submitted that as on today, he is pursuing his qualifications, required to acquire the status of a Pastor. No proof has been filed. During enquiry, it is also the case of the respondent/wife, that by misrepresenting that he was a Pastor, marriage was solemnized, which fact she came to know only after the marriage.

12. As the contention of the petitioner/husband that wife as nurse, she is earning a sum of Rs.10,000/- per month is not substantiated, liability of the husband to pay maintenance, even after a decree of divorce, subsists. While, fixing the quantum of maintenance, the Court below has considered the avocation of the petitioner/husband and taken note of his testimony, that the father-

in-law, as Pastor was earning Rs.50,000/-. During enquiry, he himself has admitted that he is assisting his father in the work of a Pastor. Therefore, it cannot be said that there is no earning. But quantum of maintenance cannot be fixed on the basis of earning of his father-in-law, stated to be engaged in the same avocation. There is no proof that his father-in-law was earning Rs.35,000/- per month.

13. Fact remains that he has not even seen the child, after it was born on 06.04.2009 and does not even know the child's name. He has not bothered to provide maintenance to wife and child. Considering the expenses towards food, shelter, clothing, education to minor female child and the wife, the learned Judicial Magistrate, Tambaram, has ordered maintenance of Rs.5,000/- to the wife and Rs.7,000/- to the minor daughter, to be paid from the date of filing of M.C.No.15 of 2010 till 30.08.2012, i.e., the date of judgment.

14. Though, Mr.D.Saravanan, learned counsel for the revision petitioner assailed the correctness of the judgment in M.C.No.15 of 2010 reiterating the same grounds, this Court is not inclined to interfere with the finding of the Court below. Appreciation of evidence, on the facts pleaded, and the consequent finding that the husband has failed to provide maintenance to the wife and child, cannot be said to be manifestly illegal. But, at the same time, the contention of the learned counsel for the petitioner on the aspect of quantum of maintenance, deserves consideration.

15. As observed earlier, when the respondent/wife and her mother were enquired, it is their statement that at the time of marriage there was misrepresentation by the petitioner/husband that he was a Pastor. According to her, the truth came to light, only thereafter. Even as per the version of the petition/husband, he is only assisting his father. No categorical evidence has been adduced by the respondent/wife regarding the monthly earning of the petitioner/husband. On analysis of the overall evidence, this Court can safely arrive at a conclusion that the petitioner / husband is living with his parents and by assisting his father in religious activities, is earning a reasonable income, if not equivalent to the earning of his father-in-law. Considering the above, a sum of Rs.12,000/- ordered as maintenance to both wife and child is excessive.

16. Therefore, the maintenance ordered by the learned Judicial Magistrate, Tambaram, is modified to the effect that the petitioner/husband is directed to pay maintenance of Rs.4,000/-pm to respondent/wife and Rs.4,000/-pm to minor female child from the date of filing of the Maintenance case. The arrears of maintenance to be paid within three months, from the date of receipt of a copy of this order. The petitioner shall continue to pay maintenance to the wife and child, at the rate, now determined by this Court, regularly, before the 5th of every English Calendar Month. The respondents are

permitted to seek for enforcement, if the order is complied with, within the abovesaid time.

17. With the above directions, this Criminal Revision case is disposed of. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar
Dated:2.3.15

True Copy

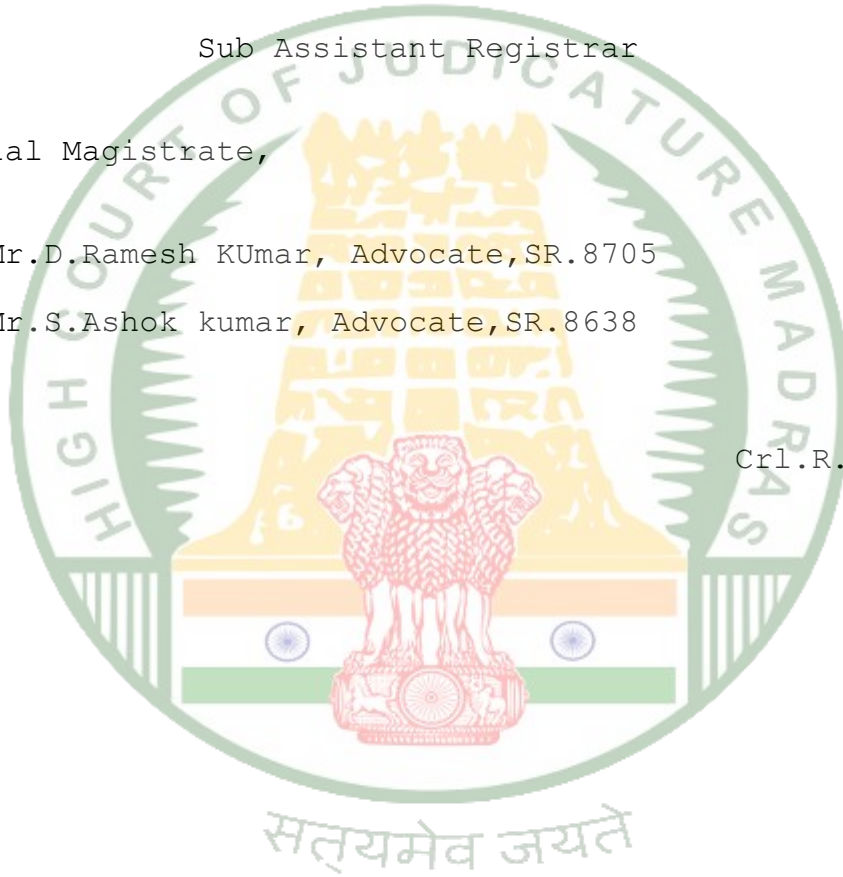
To
Sub Assistant Registrar
The Judicial Magistrate,
Tambaram.

+2 cc to Mr.D.Ramesh KUMar, Advocate,SR.8705

+1 cc to Mr.S.Ashok kumar, Advocate,SR.8638

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Crl.R.C.No.316 of 2014



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