

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CrI.R.C.No.127 of 2015

and M.P.No.1 of 2015

M.G.Vishnu

.. Petitioner

Vs

1. M.Arunkumari
2. Minor V.Sanjaiyan
3. Minor V.Gowthaman

.. Respondents

Minors are rep by guardian and their
mother Arunkumari R1

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code against the order dated 31.08.2012 made in M.C.No.10 of 2011 on the file of the Court of District Munsif-cum-Judicial Magistrate, Ambur in so far as awarding interim maintenance of Rs.3,000/- to the 1st respondent is concerned.

For Petitioner : Mr.N.S.Sivakumar

For Respondents: Mr.K.Umar

O R D E R

Wife and two minor children aged about 3 years and one year, respectively, have filed M.C.No.10 of 2011 on the file of the learned District Munsif-cum-Judicial Magistrate, Ambur for maintenance under Section 125 (1) (a) (b) of the Code of Criminal Procedure. According to the claimants, marriage between the petitioner and 1st respondent/wife was solemnized on 08.09.2005 at Om Sakthi Thirumana Mandapam, Krishnapuram, Ambur.

2. It is the case of the 1st respondent/wife that Rs.5,00,000/- was spent for the marriage. 25 Sovereigns of Gold were given. In addition to the above, cash of one lakh was also given. Out of the wedlock, the couple were blessed with two children, 2nd respondent - Minor V.Sanjaiyan and 3rd respondent - Minor V.Gowthaman.

3. Before the learned Additional District Munsif-cum-Judicial Magistrate, Ambur, wife has further contended that petitioner/husband has harassed her to bring Rs.2,50,000/- for purchasing a car. She was unable to bring the said amount and the harassment continued. In-laws have also joined him. Though a panchayat was held, petitioner/husband did not correct himself. On the other hand, he filed O.P.No.3607/10 for divorce under Section 13 (1)(ia) of the Hindu Marriage Act 1955. Matter is pending before the Principal Family Court, Chennai.

4. Before the Court below, claimants have further contended that petitioner/husband is an engineer in Onida TV Company and was earning Rs.45,000/- per month. It is also their contention that out of the property owned by him, there was regular income. Wife has also contended that the petitioner/husband has failed to maintain the claimants. They have no means to maintain themselves. For the abovesaid reasons, claimants have sought for maintenance of Rs.10,000/- pm, for wife, Rs.5,000/- pm, each for children and Rs.10,000/- pm, each for medical expenses of children.

5. Petitioner/husband has denied the allegations of harassment. According to him, from 2005-09, there was no complaint of harassment or denial of maintenance. He also added that he has discharged his duties as husband and father of the children, respectively. Dowry allegation is denied. According to him, mother of 1st respondent/wife, is involved in a murder case and that was the cause for the respondent/wife to leave the matrimonial home.

6. Before the learned Additional District Munsif-cum-Judicial Magistrate, Ambur, 1st respondent/wife examined herself as PW1 and adduced evidence. PW2, is one Suresh Kumar. Ex.P1, Wedding invitation, Ex.P2, Birth certificate of 2nd respondent, Ex.P3, Birth certificate of 3rd respondent, Ex.P4, copy of the petition filed by the respondent, Ex.P5, Sale Agreement copy, Ex.P6, Sale Deed, Ex.P7, Copy of Sale Deed, Ex.P8, Copy of Document No.3596 of 2004, Exs.P9 & P10, Certified copies, Ex.P11, Pan Card, Exs.P12 to P14, Photographs, have been marked.

7. After perusal of Ex.P4, petition in O.P.No.3607 of 2010, filed by the petitioner/husband, under Section 13(1) (ia) of the Hindu Marriage Act, 1955, before the Principal Judge, Family Court, Chennai and considering the oral and documentary evidence adduced, particularly, cross examination of petitioner/husband in M.C.No.10 of 2011, the learned Additional District Munsif-cum-Judicial Magistrate, Ambur, has observed that prior to marriage the petitioner/husband was employed as an engineer in Onida Company.

8. Though, petitioner/husband, has pleaded that he had quit the job, there was no proof. On the contention that a Diploma Holder was only employed as a daily labourer and earned Rs.100/- per day, the Court below has observed that such contention is highly imaginary. Before the trial Court, he has also not furnished any details as to when and for what reason, he had quit the job from Onida TV Company.

9. During course of cross examination, petitioner/husband had agreed to maintain the children. Finding that the petitioner/husband, has willfully neglected to provide maintenance to wife and children, though, he had means to do so, and taking note of the cost of living, financial inability of the respondents to maintain themselves, vide judgment in M.C.No.10 of 2011 dated 31.08.2012, the learned Additional District Munsif-cum-Judicial Magistrate, Ambur, has ordered maintenance of Rs.3,000/-pm, to the 1st respondent/wife and Rs.1,000/- pm, each to the minor children to be paid before 5th of every English Calendar month. The Court below has directed maintenance to be paid from the date of filing of maintenance case.

10. Though, Mr.N.S.Sivakumar, learned counsel for the revision petitioner assailed the correctness of the order of maintenance, reiterating the very same grounds, made before the Court below, this Court, is not inclined to accept the said contention.

11. As stated supra, after considering the oral and documentary evidence adduced by both parties, the Court below, has arrived at a proper conclusion that it was the petitioner/husband, who had willfully neglected to provide maintenance to the wife and children, and that it was not a case of refusal of the wife/children to live with the petitioner/husband without sufficient cause. Finding of the Court below cannot be said to be perverse warranting interference.

12. As expressed in the Court below, even in this revision petition, petitioner/husband has come forward to maintain only the children and disputed the order of maintenance to the wife on the grounds that it is she who went away from the matrimonial home. Moral and legal obligations of the husband to maintain his wife and children can never be disputed.

13. Admittedly, the petitioner is stated to be employed in Onida TV Company. During the course of hearing, it is also admitted that he was a diploma holder. Maintenance ordered at Rs.3,000/-pm, to wife and Rs.1,000/-pm, each to the minor children aged about 3 years and one year respectively, at the time of filing of M.C.No.10 of 2011, before the Court below, cannot be

said to be grossly excessive warranting interference. To provide food, shelter, clothing and other incidental expenses, one requires a reasonable sum.

14. Quantum of maintenance ordered, is not on the higher side. Factum of neglect by the husband has been proved. For the reasons stated supra, this Court is not inclined to interfere with the impugned judgment and therefore, the Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petition is closed.

15. After the dismissal of Maintenance, learned counsel for the petitioner submitted that a sum of Rs.2,000/- ordered as maintenance to the children has been deposited periodically and it is now lying in the Court deposit. Consequent to the dismissal of this revision case, respondents are at liberty to seek for payment out.

16. The petitioner shall pay the arrears of maintenance to the respondents within a period of eight weeks from the date of receipt of a copy of this order. Petitioner/husband is further directed to pay the monthly maintenance regularly, before the 5th of every English Calendar Month. In the event of default of payment of arrears of maintenance as ordered above, respondents are at liberty to seek for enforcement in the manner known to law.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Additional District Munsif-cum-Judicial Magistrate, Ambur.

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