

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.139 of 2015
and
M.P.No.1 of 2015

Balau @ R.Ganesan

...Petitioner

Vs

1. G.Kavitha
2. G.Dinesh (Minor)
[minor rep. By R1/mother]

...Respondents

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code to set aside the order dated 30.01.2015 passed in M.C.No.14 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Paramathi, Namakkal District.

For Petitioner : Ms.R.Hemalatha

O R D E R

Criminal revision case is made against the order made in M.C.No.14 of 2013 on the file of the learned District Munsif cum Judicial Magistrate, Paramathi, Namakkal District, by which the Court below has ordered maintenance of Rs.5,500/- per month to the 1st respondent-wife and Rs.6,500/- to the 2nd respondent/minor son.

2. Material on record discloses that the marriage between the petitioner and 1st respondent was solemnized on 23.06.1999. Out of wedlock, the couple were blessed with the 2nd respondent/son. It is the case of the respondents that there were frequent incidents endangering the life and hence they were constrained to leave the matrimonial home. On 14.11.2013, a complaint was lodged to the Sub Inspector of Police, All Women Police Station, Vellore. Though, before the police, the petitioner gave an assurance to have a peaceful living, he did not keep the promise. He had failed to

provide maintenance to the respondents.

3. Respondents have contended that the petitioner/husband owns a house worth Rs.50 Lakhs, agricultural lands, Fixed Deposits in Indian Overseas Bank for Rs.3,80,000/- and further deposit of Rs.3 Lakhs in Market Plus Scheme, LIC, Vellore and Rs.10,000/- in Shriram City Union Finance, and inspite of sufficient means, he has failed to provide basic amenities and maintenance to the wife and child. On the abovesaid pleadings the respondents have sought for payment of Rs.20,000/- towards maintenance, health and education. Learned District Munsif cum Judicial Magistrate, Namakkal, has taken the case on file in M.C.No.14 of 2013.

4. On the above averments, the petitioner/husband has submitted that he had suffered an accident, due to which he became disabled and thus not in employment. He has further submitted that it was the wife, who had caused cruelty to him. According to the petitioner, on account of his disablement, he is not able to maintain himself. Without prejudice to the above, he has submitted that all the documents, deposit receipts are in possession of the wife. For the abovesaid reasons, he has prayed for dismissal of the petition.

5. Before the trial Court, two witness have been examined on each side. Ex.P1 dated 23.06.1999, Marriage invitation and Exs.P2 & P3 dated 26.07.1988 and 05.02.1988, respectively, registered sale deeds of the properties in the name of the respondent's mother, have been marked on the side of the respondents. Ex.R1, is the receipt for payment of school fees and transportation expenses, incurred by the petitioner (10 Nos.).

6. On analysis of the evidence adduced by both sides, the Court below has categorically observed that though the petitioner has come forward to provide education to 2nd respondent/son, he was not willing to take his wife back. Extract of cross examination of the petitioner is reproduced.

“என்னுடைய மகனான 2-ம் மனுதாரரை என்னுடன் அனுப்பி வைத்தால் அவரை நல்ல முறையில் படிக்க வைப்பதற்கு நான் தயாராக இருக்கிறேன். ஆனால் நான் 1ம் மனுதாரரான என் மனைவியை அழைத்து சென்று குடும்பம் நடத்த தயாராக இல்லை”

7. The Court below has further observed that no evidence has been adduced by the petitioner to prove that the respondents have no means to maintain themselves. Court below has also observed that

though the petitioner has come forward to incur the educational expenses, he has not provided expenses to meet even the basic amenities like food, shelter and clothing, to them.

8. Before the Court below, during cross examination, the petitioner has admitted that a sum of Rs.3,77,815/- was in the Fixed Deposit of Indian Overseas Bank, Vellore. He has also admitted that a sum of Rs.1,56,000/- was in the Fixed Deposit of LIC. Rs.10,000/- deposit in Shriram City Union Finance has also been admitted. On the ownership of houses and land, the petitioner has admitted that near Chengampalli bus stop, he owns a house measuring 1661 sq.ft. In the said building, he has grocery shop and tea shop. Behind the said shop the spouses resided together. In addition to the above, he has also admitted that he owns 27 cents of Agricultural lands in S.No.18/3, Edayaru Kizhmugam. There are other properties, owned by the petitioner and his brother in S.Nos.60/B2 to the extent of 39 cents and 64 ½ cents in S.No.36/3, and, there is a joint patta.

9. Though, the petitioner has contended that on account of an accident, he had incurred major expenses for surgery, and therefore, he could not engage himself in any employment and further contended that he had only one lakh in the bank deposit and thus not in a position to maintain himself, admission on the aspect of ownership of house in which, he has a grocery and tea shop, agricultural lands, in Edayaru Kizhmugam, makes it clear that the petitioner has sufficient means not only to maintain himself, but also maintain his wife and son.

10. Reading of the impugned judgment in M.C.No.14 of 2013 indicates that the annual educational expenses for the son is about Rs.30,000/-. Thus, it is evident that despite having sufficient means, the petitioner has put up an untenable defence. There is also categorical admission of owning a grocery and tea shop in house measuring 1661 sq.ft near Chengampalli Bus Stop. On the contra, there is no evidence to prove that respondents have means to maintain themselves. Failure of the petitioner to provide maintenance to the wife and his unwillingness to live together, is per se evident. As stated supra, During cross examination, the petitioner has made his intention very clear, not to take back his wife.

11. Considering the cost of living to provide basic amenities such as food, shelter, clothing and health, sum of Rs.5,500/-per month ordered as maintenance to the wife cannot be said as grossly excessive.

12. Sum of Rs.30,000/- is stated to be the educational expenses incurred per year. Considering the means of the petitioner, that he owns a grocery and tea shop, besides, large extent of agricultural lands in Edayaru Kizhmugam, and as the child grows, he may incur higher educational expenses, cost of education, transportation expenditure for health, purchase of books and other incidental expenses, sum of Rs.6,500/-per month ordered to the child, till he attains majority, cannot be said to be on the higher side. There is no manifest illegality in the impugned order and hence, the criminal revision case is dismissed and the connected Miscellaneous Petition is closed.

13. Consequent to the dismissal of the revision case, the petitioner is directed to pay the arrears of maintenance, after deducting the educational expenses already incurred, within two months from the date of receipt of a copy of this order and that, the petitioner is also directed to continue to pay the maintenance every month, as ordered to the respondents on or before the 10th of every English Calendar month.

Sd/-
Deputy Registrar (J)

//True Copy//

Sub Assistant Registrar

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To

1. The District Munsif cum Judicial Magistrate,
Paramathi, Namakkal District.
2. The Public Prosecutor,
High Court, Madras.

1 CC to Mr.C.Prakasam, Advocate SR.No. 10287

VSN (CO)
PSI (10.03.2015)

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