

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.146 of 2015

and M.P.No.1 of 2015

D.Mahendran

.. Petitioner

Vs

1. Sujatha

2. Minor Iniya Sree

[minor rep. By the natural guardian R1] ... Respondent

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code to set aside the order in M.C.No.69 of 2011 dated 28.11.2014 on the file of the Family Court, Salem.

For Petitioner : Mr.M.Sathish Kumar

O R D E R

Challenge in this revision petition is to the order made in M.C.No.69 of 2011 dated 28.11.2014, on the file of the learned Judge, Family Court, Salem, directing the petitioner/husband to pay a sum of Rs.4,000/- as maintenance to the wife/1st respondent and Rs.3,500/- to the minor daughter/2nd respondent. The trial Court has further directed past maintenance of Rs.2,000/- to be paid to the respondents, from the date of filing of the Maintenance Case in 2011, till the date of disposal of the maintenance case i.e., on 28.11.2014.

2. Material on record discloses that the marriage between the parties was solemnized on 27.08.2007, and they were blessed with a female child. Case of the respondent/wife is that in order to set up an automobile shop, petitioner demanded money and ill-treated her. When she was seven months pregnant, the petitioner assaulted her, and due to which, she suffered nervous disorder. On account of cruelty and demand of dowry, a criminal case under Sections 498 (A), 506 (ii) r/w, Section 4 of the Dowry Prohibition Act, was registered against the petitioner/husband and the in-laws.

3. Material on record discloses that as regards the claim of maintenance, notices have been exchanged. Wife has further submitted that at the time of filing the petition for maintenance, petitioner,

was working in an automobile company and earned Rs.8,000/- per month. That apart, his family has sufficient sources of income. Rent from three houses is also collected. Justifying the inability to live in the matrimonial home, on account of cruelty and dowry demand, and explaining her plight, M.C.No.69 of 2011 has been filed, claiming maintenance at the rate of Rs.5,000/- each, to the wife and minor daughter.

4. Before the Court below, the petitioner has refuted the allegations of dowry demand made against him. According to him, there was no difference of opinion between the spouses. He has denied physical assault. He has expressed his desire to live with the wife. He has further submitted that wife is employed in a private company. She has willfully neglected and refused to live with him. With the above defence, he has prayed for dismissal of M.C.No.69 of 2011.

5. Before the Court below, two witnesses, have been examined by the respondent/wife. Ex.P1, dated 27.08.2007, Marriage Invitation, Ex.P2 dated 28.08.2009, Birth certificate of the 2nd petitioner/daughter, Ex.P3, dated 26.06.2010, FIR Copy, Ex.P4 dated 07.10.2010, copy of the lawyer's notice sent by the 1st petitioner to the respondent/husband and Ex.P5, dated 14.10.2010, reply notice, have been marked. Petitioner has examined himself as RW1 and marked Ex.R1, dated 17.12.2007, Letter by the 1st petitioner's maternal uncle to the father of the respondent/husband, Ex.R2 dated 25.12.2007, Copy of the complaint by the 1st petitioner/wife given to the Superintendent of Police, Krishnagiri, Ex.R3, dated 25.12.2007, copy of the certificate accepting the complaint and Ex.R4, photographs of the 1st petitioner and respondent.

6. Upon considering, the averments and evidence, both oral and documentary, the learned Judge, Family Court, Salem has arrived at a conclusion that the petitioner has neglected and refused to maintain the respondents.

7. On account of cruelty and dowry demand by the petitioner and in-laws, a case has been registered as per the Ex.P3, First Information Report, for the offences under Sections 498 (A), 506(ii) IPC r/w Section 4 of Dowry Prohibition Act, and therefore, the court below has also arrived at a categorical conclusion, that there was justifiable cause for the wife, to leave the petitioner. The Court below has also observed that no materials were produced by the petitioner to prove that 1st respondent/wife had means to maintain herself and child.

8. Upon perusal of Ex.P1, Marriage Invitation, Court below has found that, at the time of marriage, in 2007, after completing A.M.E, the petitioner was employed in Regal Motors Private Limited. His father, was employed as a Manager in Dharmapuri Central Co-operative

Bank. Though, respondent/wife has submitted that the petitioner had other sources of income through rent, no document has been filed by the wife to substantiate the same. However, having regard to the educational qualification and employment of the petitioner in a private company in the year 2007, and the passage of time, the Court below proposed to order past and future maintenance. Fixing the past maintenance at Rs.1,000/- to each, the Court below has directed a sum of Rs.2,000/- to be paid from the date of institution of Maintenance Case No.69 of 2011, till it was disposed. For future maintenance to the wife, a sum of Rs.4,000/- per month, has been ordered. For minor daughter, the Court below has ordered a sum of Rs.3,500/- per month, till her marriage.

9. To provide food, shelter and clothing and in addition to the above health and education, one may require a reasonable sum. Sum of Rs.2,000/- ordered as past maintenance to both from the date of filing of maintenance case, till it was disposed of, is too low. Hardly a sum of Rs.66/- per day, has been ordered to both the respondents. The Court below has grossly failed to consider the cost of living, inflation and the expenses to be incurred for basic amenities.

10. Considering the inadequacy of the quantum of past maintenance ordered by the Court below, and the upward expected revision of income to a skilled worker, more particularly, a person qualified in Automobile engineering, and also considering the fact that his father was also an employee as a Manager, District Central Co-operative Bank, and therefore, there is no liability to incur any expenditure to his parents, future maintenance of Rs.4,000/-per month ordered to the wife, at any stretch of imagination cannot be said to be excessive. Girl child has to be provided education, health and other basic amenities. Rs.3,500/-per month ordered as future maintenance also cannot be said to be grossly excessive.

11. Though, Mr.M.Sathish Kumar, learned counsel for the petitioner assailed the correctness of the order made in M.C.No.69 of 2011 dated 28.11.2014 on the grounds inter alia that the trial Court has failed to consider that it is the respondent wife who had left the matrimonial home without any just cause, perusal of the impugned order, shows that the wife, who had been subjected to cruelty and dowry demand had filed a case against the petitioner and others under Sections 498(A) and 506(ii) IPC r/w Section 4 of the Dowry Prohibition Act. When there is a criminal case registered against the petitioner and others, for the abovesaid offences, one cannot expect the wife to have a joint living with the husband. It is natural that she would prefer to stay away and not to be subjected to further cruelty. Justifiable cause for the wife living separately with her child, has been addressed and also substantiated.

12. Though, the petitioner has contended that the trial Court had failed to consider that the criminal case has ended in acquittal, documents marked before the trial Court do not indicate, marking of the copy of the judgment in which, the petitioner and others are stated to have been acquitted. Even taking it for granted that the petitioner and others, arrayed as accused were acquitted that would not absolve the petitioner of his liability to maintain his wife and child.

13. For the reasons stated supra, this Court is not inclined to interfere with the impugned judgment. Criminal Revision case is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar
Dated:10.3.15

True Copy

Sub Assistant Registrar

To

The Judge, Family Court, Salem.

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