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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No.88 of 2015

and

M.P.No.1 of 2015

V.Soundar Rajan

...Petitioner/Respondent

vs.

Manjula

...Respondent/Petitioner

PRAYER: Criminal Revision Case filed under Sections 397 read with 401 of Criminal Procedure Code to set aside the order dated 28.11.2014 passed in MC No.13 of 2011 on the file of the learned Principal District Munsif -cum- Judicial Magistrate, Vaniyampadi, Vellore District.

For Petitioner : Mr.S.Arivazhagan

JUDGMENT

Revision Petition is directed against the order made in MC.No.13 of 2011, dated 28.11.2014, on the file of the learned Principal District Munsif -cum- Judicial Magistrate, Vaniyampadi, Vellore District, by which, petitioner/husband has been directed to pay maintenance at the rate of Rs.3,000/- per month, from the date of filing of the petition.

2.The Case of the respondent/wife is that marriage between the parties was solemnized on 29.04.2004. At that time, 25 sovereigns of gold and Rs.1,00,000/- in cash, were given as Sridhana. Thereafter, the petitioner/husband, threw away the respondent/wife from the matrimonial home. She has no means to maintain herself. MC No.13 of 2011, has been filed on the file of the learned Principal District Munsif -cum- Judicial Magistrate, Vaniyampadi, Vellore District,



under Section 125 CrPC, for maintenance at Rs.3,000/- per month.

3. The petitioner/husband, in his counter affidavit, has denied the allegations of harassment and dowry demand. According to him, she was already married to two other persons, and without getting a proper decree of divorce, and without dissolution of marriage, married the petitioner. On the abovesaid ground, the petitioner has denied his obligations to pay maintenance. Without prejudice to the above, the petitioner has further contended that the father of the respondent owns 10 acres of land, pumpsets and coconut trees, through which, there is a monthly earning of Rs.30,000/- per month. Petitioner has further contended that the respondent is educated and earning Rs.15,000/- per month. According to him, she has means to maintain herself and for the reasons stated supra, prayed for dismissal of MC No.13 of 2011.

4. Before the Court below, besides examining one K.Kumaresan as PW2, the respondent examined herself as PW1, and marked 5 documents, Ex.P.1 to Ex.P.5. Petitioner examined himself as RW1 and Ex.R1 and Ex.R2 have been marked. Upon consideration of the averments, evidence and taking note of a decision of the Hon'ble Supreme Court in Sunitha Kachwala V. Anil Kachwala, {2014 STPL (WEB) 703 SC = (2014) 42 SCD 042, dated 28.10.2014}, vide Judgment in MC No.13 of 2011, dated 28.11.2014, the learned Principal District Munsif -cum- Judicial Magistrate, Vaniyampadi, Vellore District, has directed the petitioner to pay the monthly maintenance of Rs.3,000/-, from the date of filing of the petition.

5. Though Mr.S.Arivazhagan, learned counsel for the petitioner, assailed the correctness of the order, on the ground inter alia that the trial Court has failed to consider the plea of the revision petitioner that the respondent has suppressed the factum of marriage between the respondent and her erstwhile husband, and without prejudice to the above contention, he further contended that it was the respondent, who had gone out of the matrimonial home and thus, there was no case of willful neglect to provide maintenance, this Court is not inclined to accept the said contention, for the reason that perusal of the impugned order shows that by producing Ex.P.4 and Ex.P.5-copies of Judgments and Decrees, in HMOP No.391 of 1998, the respondent, has stated that her marriage with one Mr.Ravichandran, had already been set aside by the Court of competent jurisdiction and that the marriage between the parties to the present lis has been solemnised on 29.04.2014.



6. Though the learned counsel for the petitioner further contended that the respondent was a Teacher in a private school, earning Rs.15,000/- per month and thus, she is not entitled to seek for maintenance, perusal of the impugned Judgment shows that the said contention has not been substantiated by any document. The Court below, has observed that it was only an order of submission. As regards the contention that the respondent, who had gone out of the wedlock, the learned Principal District Munsif -cum- Judicial Magistrate, Vaniyampadi, has relied on a decision of the Hon'ble Supreme Court in Sunitha Kachwala V. Anil Kachwala {2014 STPL (WEB) 703 SC = (2014) 42 SCD 042, dated 28.10.2014}.

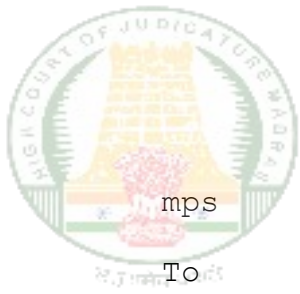
7 .On the issue as to whether the petitioner had an avocation and earning, reading of the impugned Judgment shows that during cross examination, the petitioner himself has admitted that he was engaged in making garlands and earned income between Rs.200 and Rs.250/- per day. He has also admitted that two other persons were working under him. Though the petitioner has deposed that the flower shop in which, he carried on his avocation in Koyampedu Market, was in open space, contra evidence has been adduced by the respondent to the effect that the petitioner had regular shop and that information has been furnished by the Assistant Revenue Officer, Corporation of Chennai, under the Right to Information Act. Thus, having regard to the avocation of the petitioner, his capacity to engage two other persons to work under him, the learned Principal District Munsif -cum- Judicial Magistrate, Vaniyampadi, Vellore District, vide Judgment dated 28.11.2014, has directed the petitioner, to pay Rs.3,000/- as monthly maintenance to the respondent from the date of filing of MC No.13 of 2011.

Going through the impugned order, this Court does not find any illegality or irregularity, falling within the ambit to Section 397 of IPC read with 401 of CrPC, warranting interference. The Criminal Revision petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar



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To

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The Principal District Munsif
-cum- Judicial Magistrate,
Vaniyampadi,
Vellore District.

1 CC to Mr.S.Arivazhagan, Advocate SR.No. 6130

CRL.R.C.No.88 of 2015
and M.P.No.1 of 2015

BVR (CO)
PSI (25.02.2015)