

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.957 of 2013

Praba @ Premavathy

.. Petitioner

vs

Padmanabhan

.. Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the order dated 14.05.2013 passed by the learned District Judge, Family Court, Pondicherry in M.C.No.64 of 2008.

For Petitioner : Mr.Stalin Abhimanyu

For Respondent : Mr.K.Sasidharan

ORDER

The petitioner has come forward with this Criminal Revision case as against the order dated 14.05.2013 passed by the learned District Judge, Family Court, Pondicherry in M.C.No.64 of 2008 in rejecting the maintenance petition.

2. The brief facts of the case is as follows:

The petitioner/wife filed a petition under Section 125(1)(a) of the Criminal Procedure Code claiming maintenance from the respondent/husband in a sum of Rs.5,000/- per month. The Court below dismissed the said petition on the ground that the petitioner/wife left the matrimonial home voluntarily and hence she is not entitled to any maintenance. Challenging the same, the present revision is filed.

3. Learned Counsel for the petitioner/wife would submit that the Court below disbelieved the contention of the wife that there was a dowry demand and because of that she was driven out of the matrimonial home as no evidence was produced regarding the same. The further contention is that though the Court below gave a finding to the effect that the respondent/husband is a man of means, rejected to grant maintenance. In this regard, the learned counsel also cited a Division Bench judgment of this Court wherein, this Court had held that maintenance should be granted even to an erring spouse. Accordingly, he would pray for setting aside the order passed by the Court below and to award maintenance.

4. Learned counsel appearing for the respondent/husband would submit that the petitioner/wife has voluntarily left the matrimonial home; hence, she is not entitled to any maintenance.

Moreover, he has to look after his age old parents. He would further submit that the respondent was earlier running a STD business and at present the said business has been closed and he himself is suffering to look after his day to day life. Accordingly, the Court below considering all these facts dismissed the maintenance petition, warranting no interference in this Criminal Revision case.

5. Heard both sides and perused the materials available on record.

6. On a careful perusal of the order passed by the Court below, it is seen that earlier the respondent/husband initiated proceedings for divorce as against the petitioner/wife as early as in the year 2007; however, in the said petition he has not contended that both of them are living separately. Therefore, the Court below disbelieved the contention of the petitioner/wife that she was ill-treated by the respondent and his family members and that he has deserted her. Though the Court below had held that the respondent/husband is a man of means, since the petitioner/wife failed to prove that the respondent/husband has wilfully deserted her, denied the grant of maintenance.

7. In the unreported Division Bench judgment of this Court dated 10.01.2003 in the case of P.Kalyanasundaram vs. K.Paqualatchamy, this Court in para No.42 has held as follows:

"This Court in the case Rajagopalan v. Kamalammal [AIR 1982, Madras 187] has held that under Section 25 of the Hindu Marriage Act, permanent alimony can be granted even to an erring spouse. Therefore, even though the decree of divorce is granted on the ground of desertion by the wife and hence the wife is the erring spouse, yet it does not preclude the Court from passing the order of maintenance. After considering this provision and the above decision as well as the fact that the husband is the highly placed civil servant in the Central Government, the award of maintenance granted by the Family Court is confirmed. With this modification, this appeal is allowed."

8. In the case on hand, after the dismissal of the divorce petition, no steps have been taken by the husband. Hence, the order passed by the Court below has to be set aside on that ground.

9. Coming to the grant of maintenance, the petitioner/wife now says that she has no wherewithal to maintain her; the respondent/husband also states that his STD booth has been closed and he has no wherewithal to pay maintenance. In any view of the matter, it is the bounden duty of the husband to maintain his wife.

10. Accordingly, the following order is passed:

(i) The respondent/husband shall pay a sum of Rs.2,000/- [Rupees two thousand only] from the date of the maintenance petition till July 2015.

(ii) The arrears of maintenance shall be paid directly to the petitioner/wife within period of three months' from the date of receipt of a copy of this order.

(iii) It is further directed that that the respondent/husband shall pay maintenance to the petitioner/wife at the rate of Rs.3,000/- [Rupees three thousand only] from August 2015, i.e., payable in September 2015 and shall continue to pay the said sum on or before 5th of every succeeding English Calendar month.

12. With the above direction, this Criminal Revision Case is partly allowed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vj2

To

The District Judge,
Family Court, Pondicherry

1 cc to Mr.K. Sasindran, Advocate, Sr. 44036

1 cc to Mr.Stalin Abhimanyu, Advocate, Sr. 43989

Crl.RC.No.957 of 2013

MSM (CO)
kk 10/9

सत्यमेव जयते

WEB COPY