



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2015

CORAM:

THE HONOURABLE MRS.JUSTICE S.VIMALA

Criminal Revision Case (MD)No.381 of 2015
and
M.P.(MD)No.1 of 2015

J.Kannappan

.. Petitioner/Respondent.

Vs.

1.Sumathi

2.Minor.K.Arun

.. Respondents/Petitioners.

(2nd respondent represented
by his mother, the 1st respondent)

Prayer: Revision is filed under Section 397 and 401 Cr.P.C. to call for the records relating to the order passed by the learned Judicial Magistrate, Thirumangalam M.C.No.21 of 2013, dated 18.03.2015 and set aside the same.

For Petitioner : Mr.Babu Rajendran

For Respondents : Mr.A.Rajkumar Sen

ORDER

This revision petition has been filed by the husband challenging the order of maintenance passed by the learned Magistrate, Thirumangalam directing the revision petitioner to pay a sum of Rs.1,000/- to the wife and Rs.4,000/- to the child.

2.The relationship between the revision petitioner and the respondents herein is an admitted fact. The dispute is on liability and quantum of maintenance.

3.The first contention of the learned counsel for the revision petitioner is that when the wife is surviving without any maintenance for a period of 14 years, as the maintenance petition itself has been filed after 14 years, the presumption is that the wife is able to maintain herself and therefore, there is no need to pay any maintenance to the wife.

4. The liability of the husband to maintain his wife arises, when the husband having sufficient means neglect and refuses to maintain his wife. In order to claim maintenance, the wife must show that (a) she is not living in adultery (b) not living separately by mutual consent (c) there is no sufficient reason for her to refuse to live with him.



5. It is not the case of the husband that the wife was able to maintain herself. The inaction on the part of the wife for a period of 14 years can be construed as amounting to mean that she was able to maintain herself. The expression unable to maintain used by the legislature is not superfluous or without any importance. In view of the changing social conditions, the phrase has been used. The provisions of maintenance is only intended to a wife who is not able to maintain herself. The expression unable to maintain herself does not also mean that the wife should be absolutely destitute before she can apply for maintenance. Under what circumstances maintenance was not claimed for a period of 14 years is the crucial issue.

6. Whether she was affluent circumstances or whether she was employed and earning money are the factors which would afford answer to the above issue.

7. When confronted with that question, she has stated that in her cross examination that she has been able to live, by selling the jewels given by her parents at the time of marriage as srithana. From the answer it is clear that unaware of her right to claim maintenance and finding an alternative to earn her livelihood by selling the jewels, the wife has spent her life. Therefore, the non prosecution of the claim of maintenance, for 14 years has remained a blessing to the husband. Moreover, the liability to pay maintenance is a continuing liability so long as there exist legal grounds for the wife to claim maintenance. Therefore, the non claim by the wife for a period of 14 years is not a disqualification for the wife to claim maintenance.

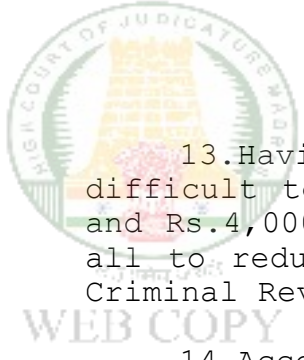
8. The second contention of the learned counsel for the revision petitioner is that the husband has neither income nor any job and therefore, he is not in a position to maintain himself and therefore, the order of the learned Magistrate is liable to be set aside.

9. The fact remains that the husband once before had been working as a typist and it is claimed that later on due to ill health, he lost his job and therefore, he became penniless. This contention is not supported by evidence. In the absence of evidence, the inference is that the act of losing the job, is a deliberate attempt to deprive the wife of her maintenance.

10. It is the further case of the petitioner that his father has offered a residential house to the respondents. It is not as if the learned Magistrate was not aware of this fact at the time of passing the order.

11. The quantum of maintenance has been fixed only after taking into account the fact that the wife has been offered a house by the father-in-law.

12. The contention of the husband that he has no means to maintain cannot be believed having to his potential earning capacity. In *Rousseau Mitra Vs. Shrimati Chandana Mitra* -MANU/WB/0221/2003: AIR 2004 Calcutta 61, the learned Single Judge of Calcutta High Court has held that when the husband voluntarily having incapacitated himself from earning, he cannot avoid his liability to maintain his wife and child.



13. Having regard to the high increase in price everyday, it is very difficult to get along with their life with this Rs.1,000/- to the wife and Rs.4,000/- to the second respondent. Therefore, there is no scope at all to reduce the quantum of maintenance and there is no merit in this Criminal Revision Petition.

14. Accordingly, this Criminal Revision Petition is dismissed. Consequently, connected M.P. is also dismissed.

Sd/-
Assistant Registrar(Co)

/True Copy/

Sub Assistant Registrar.

To

The Judicial Magistrate, Thirumangalam.

+1CC to Mr. Babu Rajendran, Advocate, SR.No. 57386.

+1CC to Mr. Rajkumarsen, Advocate, SR.No. 57028

CrI.R.C. (MD) No. 381 of 2015
and
M.P. (MD) No. 1 of 2015

AKM/30.10.2015/ /3P 4C