



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Cr1.R.C.(MD).No.500 of 2015

and

M.P.(MD)No.1 of 2015

Paramiah

: Petitioner

Vs.

1.Kalaiyarasi

2.Minor Mark William

: Respondents

Prayer: Criminal Revision Case is filed under Section 397 and 401 of Criminal Procedure Code, against the order dated 03.03.2015 passed in M.C.No.62 of 2014 by the Learned Family Court Judge, Tirunelveli.

For Petitioner

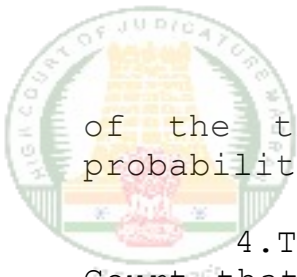
: Mr.V.Kannan

ORDER

The Petitioner/Respondent (husband) has filed the instant Criminal Revision before this Court, as against the order, dated 30.04.2015 passed in M.C.No.62 of 2014 by the Learned Family Court Judge, Tirunelveli.

2. The Learned Family Court Judge, Tirunelveli while passing the impugned order in M.C.No.62 of 2015 (filed by the Respondents/Petitioners/wife and minor child), on 03.03.2015, finally directed the Revision Petitioner/husband to pay a sum of Rs.3,000/- p.m. to the first Respondent/wife and to pay a sum of Rs.2,000/-p.m. to the minor child, as maintenance on or before 10th of every month and the same was directed to be paid from the date of filing of the petition i.e. from 25.10.2013. Further, two months time was granted to the Revision Petitioner/husband to pay the arrears of maintenance amount and resultantly allowed the petition in part.

3.Assailing the correctness, validity and legality of the order dated 03.03.2015, passed by the Learned Family Court Judge, Tirunelveli, the Petitioner has projected the present Criminal Revision Case before this Court contending that the order



of the trial Court is against law, weight of evidence and probabilities of the case.

4.The Learned counsel for the Petitioner urges before this Court that the trial Court had failed to consider that the first Respondent is having a house in her name and the loan obtained for the construction of the house is being settled by the Revision Petitioner/husband.

5.Advancing his arguments, the Learned counsel for the Petitioner/husband forcibly submits that the first Respondent/wife had not produced any documentary evidence to substantiate her allegation that she was under medical treatment in a hospital for the grievous injuries caused by the Revision Petitioner/husband.

6.Yet another portion of contention advanced on behalf of the Petitioner is that the trial Court had failed to take into account the primordial facts that the Revision Petitioner/husband is spending for his son namely the second Respondent, for his studies and for other expenses.

7.Apart from the above, a plea is taken on behalf of the Petitioner/husband that the trial Court had not considered the fact that the first Respondent/wife is possessing a house and an agricultural land in the village. More over, the first Respondent/wife is able to maintain herself independently and therefore, she is not entitled to claim maintenance from the Revision Petitioner/husband.

8.The Learned counsel for the Revision Petitioner/husband brings it to the notice of this Court that the first Respondent/wife is having a house in her name and further, she had obtained a loan for the construction of the said house and the said amount is being settled by the Revision Petitioner/husband. Added, further, the Learned counsel for the Revision Petitioner/husband submitted that the trial Court should not have come to a conclusion that the first Respondent/wife was not having illicit intimacy with one Simson as alleged by the Revision Petitioner, just because the said Simson was the son of her sister.

9.The Learned counsel for the Revision Petitioner/husband proceeds to take a stand that the trial Court should not have come to a conclusion that the allegations made by the Revision Petitioner/husband are false because of the reason that he is facing disciplinary proceedings initiated by his department.

10.Before the trial Court in M.C.No.46 of 2013 filed by the Respondents/Petitioners, the first Respondent/wife had claimed a sum of Rs.8,000/- p.m. and further claimed a sum of Rs.4,000/- p.m. in respect of her minor son, the second Respondent/second Petitioner and in all, a sum of Rs.12,000/- p.m.



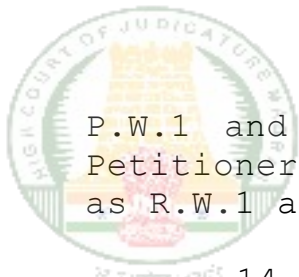
towards maintenance was claimed.

11. It comes to be known that the Revision Petitioner after the death of his wife had married the first Respondent as his second wife and out of the said wedlock, the second Respondent/minor son was born to them. These facts are not in dispute. Also, that the Revision Petitioner through his first wife is having a minor son and is being maintained by him. The first Respondent besides the second Respondent/minor son, through the Petitioner, has a minor daughter and the said daughter is being maintained by the Revision Petitioner/husband. The first Respondent/wife of the Revision Petitioner in her evidence as P.W.1, before the trial Court had categorically deposed that from the year 2006, till 2012, she was the Panchayat President of Naduvankurichi village and to a suggestion that when she was the Panchayat President and when she had constructed a house, she had replied that her father had constructed the same and that her father had obtained a loan from LIC housing and constructed the house in her name.

12. The Revision Petitioner in his counter in M.C.No.62 of 2014 (filed by the Respondents/Petitioners) had averred that on 07.07.1977, the marriage between him and one Tamilarasi took place and out of the said wedlock, a son viz., Robert Siyon Koilraj was born and it was the fact that within three months of his birth, his wife Tamilarasi died and later, the Revision Petitioner got married to the first Petitioner being the sister of Revision Petitioner's first wife and on 01.12.1998, the Petitioner through his second wife gave birth to one female child by name Tamilarasi and on 21.12.2000 another son Mark Willaim. The Petitioner had admitted in his counter to M.C.No.62 of 2014 that the first Respondent was the President of Naduvankurichi Panchayat, but had not admitted that she had constructed the house with her own amount of Rs.70 lakhs and through him, she had obtained a loan of Rs.3 lakhs. At this stage, it is to be relevantly pointed out that the Revision Petitioner in paragraph No.7 of his counter to M.C.No.62 of 2014 had candidly admitted that he was getting a pension of Rs.11,000/-, but denied that he was getting a total income of Rs.64,000/- p.m. (including income through agriculture). In fact, the Revision Petitioner had taken a specific plea that there is no necessity for him to pay the maintenance amount to the second Respondent/minor son, because of the reason that the said minor son Mark William is being maintained by him even in respect of his educational expenses. Also, that till date, he is paying the loan amount availed of by the first Respondent/wife. In these circumstances, he is not liable to pay any sum towards maintenance to the Respondents.

<https://hcservices.ecourts.gov.in/hcservices/>

13. Before the trial Court, on behalf of the Respondents/Petitioners, the first Respondent/wife was examined as



P.W.1 and Exs.P1 to P4 were marked. On behalf of the Revision Petitioner/husband, the Revision Petitioner himself was examined as R.W.1 and Exs.R1 to R4 were marked.

14. After contest, the trial Court on appreciation of the entire oral and documentary evidence available on record and also taking note of the entire conspectus and attendant facts and circumstances of the present case, in an integral fashion, had come to a resultant conclusion by allowing the petition in part and issued direction that the Revision Petitioner should pay a sum of Rs.3,000/- p.m. to the first Respondent/first Petitioner (wife) and a sum of Rs.2,000/- p.m. to be paid to the second Respondent/second Petitioner/minor son and the said amount was to be paid on or before 10th of every month and the said amount was to be paid from the date of filing the petition (M.C.No.62 of 2014) from 25.10.2013 and also further directed the Revision Petitioner to pay the arrears of maintenance amount within a period of two months.

15. At this juncture, the Learned counsel for the Revision Petitioner/husband fairly brings it to the notice of this Court that the Revision Petitioner/husband had not remitted the arrears of maintenance amount from the date of filing of M.C.No.62 of 2014, dated 25.10.2013 till date and even the Revision Petitioner had not adhere to the time schedule prescribed by the trial Court.

16. As far as the present case is concerned, this Court on going through the impugned order, dated 30.04.2015 in M.C.No.62 of 2014 passed by the trial Court is of the considered view that the trial Court in its impugned order at paragraph No.7 had, in a crystalline fashion, stated that the Revision Petitioner/husband in his cross examination had deposed that Simson is his wife's sister's son and that the Revision Petitioner/husband had made a serious allegation against the first Respondent that she had illicit intimacy with the said sister's son. Further, the relationship between the first Respondent/wife of the Petitioner with that of her sister's son is that of mother and son relationship.

17. Further, the trial Court had proceeded to observe that as against the Revision Petitioner/husband there is a misappropriation case and ultimately it had not accepted the allegations made by the Revision Petitioner against the first Respondent/wife. Finally, the trial Court had awarded a sum of Rs.3,000/- p.m. as maintenance to the first Respondent/wife and a sum of Rs.2,000/- p.m. to the second Respondent/minor Petitioner to be paid by the Revision Petitioner/husband, on or before 10th of every month, as stated earlier.

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18. It is to be noted that a husband need not stall himself with a view to maintain his wife. The Revision Petitioner as a



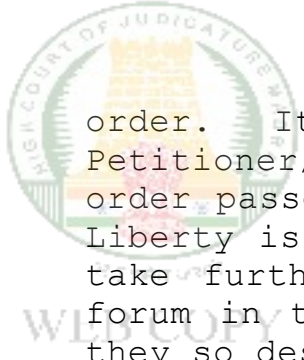
dutiful husband cannot refuse to maintain the first Respondent/wife and he cannot be taken umbrage of the fact that he had retired from his Military service and has no enough wherewithal to maintain the Respondents viz., his wife and son.

19. It is well settled principle of law that when the husband is an able-bodied person, he is to maintain his wife and children by taking up necessary avocation of his choice.

20. In this regard, one has to bear in mind that 'sufficient means' is not limited to pecuniary sources. A 'neglect' or 'refusal' to maintain a wife by the husband may be by means of words or by conduct. It may even be expressed or implied. However, where there is a duty to maintain, it has to be performed and the term 'refusal' means a failure to maintain or denial of obligation to maintain after demand. But the term 'neglect' means an omission or default in the absence of any demand thereto. Even a refusal or neglect may be implied from the conduct of a party and there need not be a formal refusal.

21. Coming to the aspect of the second respondent/minor child, it is to be pertinently pointed out by this Court that a child has no Will of his own. Mere failure or omission to maintain, will amount to neglect to maintain. The term 'wilful negligence' is a question of law, though it has to be decided on given facts. Even a long separation between the spouses without acceptable material to show any genuine effort made on behalf of the husband to persuade his wife to live with him, may be sufficient to draw an inference of neglect and refusal to maintain.

22. As far as the present case is concerned, the trial Court had rightly determined the monthly quantum of maintenance in respect of the second Respondent/minor son as Rs.2,000/- p.m. to be paid by the Revision Petitioner/husband. Insofar as the first respondent/wife's maintenance amount of Rs.3,000/- p.m. to be paid by the Revision Petitioner/husband on or before 10th of every month and that too from the date of filing of the petition from 25.10.2013, this Court is of the considered view that it is slightly on the higher side. As such, to secure the ends of justice and also to prevent an aberration of justice, this Court modifies the quantum of maintenance as Rs.3,000/- p.m. awarded by the trial Court, in respect of the first Respondent/first Petitioner/wife, from Rs.3,000/- p.m. to Rs.2,500/- p.m. The said amount of Rs.2,500/- p.m. and the said sum of Rs.2,000/- p.m. to be paid to the first Respondent/wife and the second Petitioner/minor son, are directed to be paid by the Revision Petitioner/husband from the date of filing of the petition viz., 25.10.2013 till date and the said sum is directed to be paid by the Revision Petitioner/husband, within a period of six weeks from the date of receipt of a copy of this



order. It is abundantly made clear that the Revision Petitioner/husband shall adhere to the letter and spirit of this order passed by this Court in the present Criminal Revision Case. Liberty is granted to the Respondents 1 and 2 (wife and child) to take further appropriate legal proceedings before the competent forum in the manner known to law and in accordance with law, if they so desire/advised.

23. With the aforesaid modification, this Criminal Revision Case is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar

rj2

To

1. The Family Court Judge, Tirunelveli.

2. The Public Prosecutor, Madurai Bench of Madras High Court,
Madurai

+1 cc TO MR.V.Kannan, Advocate, Sr NO:68680

JAM/AAL-MPA/11.12.15/6P-4C

Order made in
Cr1.R.C.(MD).No.500 of 2015
01.12.2015