

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2016

CORAM

THE HON'BLE MR. JUSTICE C.T. SELVAM

Crl.R.C.No. 924 of 2015

Vinotha

...Petitioner/Petitioner

Vs.

Saravanan

...Respondent/Respondent

Prayer:- Petition filed under Section 397 and 401 of Cr.P.C. to set aside the dismissal order dated 29.06.2015 passed in M.C.No.3 of 2015 on the file of the Judicial Magistrate No.II, Mannargudi and allow this criminal revision petition.

For Petitioner : Mr.R.V.Rajasekaran

For Respondent : Mr.Swami Subramanian

O R D E R

This revision challenges the order of the learned Judicial Magistrate No.2, Mannargudi order passed in M.C.No.3/2015 dated 29.06.2015.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3. Petitioner has moved M.C.No.3 of 2015 seeking payment of maintenance by the respondent/husband in a sum of Rs.20,000/- per month. The Court below has dismissed the petition by order dated 29.06.2015, Hence, this revision.

4. A reading of the order of the Court below reveals that maintenance has been denied on the reasoning that case in C.C.No.50 of 2014 on the file of the Judicial Magistrate - II, Mannargudi, wherein the respondent/husband and also his family members faced trial for offences under Section 498(a) and 4 of the Dowry Prohibition Act, ended in acquittal. The Court below has also found that the report of the social welfare officer informs no acts of cruelty or demand for dowry by the respondent and further in a Panchayat held by village elders, petitioner was advised not to threaten of committing suicide or insisting upon to credit of the respondents salary into her account.

5. The respondent/husband is working in the Border Security Force as a constable with a monthly income of Rs.22,000/-. It is not the respondent's case that he is entitled to residential quarters or that he had called upon the petitioner/wife to take up residence with him at his place of employ. It is his grievance that the petitioner insisted upon setting up of an independent house and had left his parental home on her own.

6. Section 125 Cr.P.C requires husband to maintain his wife when she is unable to maintain herself. Section 125(4) would disentitle a wife to maintenance, if she refuses to live with her husband. Pertinently, it is the refusal to live with the husband that would disentitle the wife to maintenance and not the refusal to live with his parents/relatives. On the above reasoning, this petition would succeed.

7. Considering the respondent's admission that he is drawing a sum of Rs.22,000/- per month and taking into consideration the submission of learned counsel for respondent that the respondent has to take care of his parents and two unmarried sisters, this Court directs the respondent to pay a sum of Rs.6,000/- per month, as maintenance to the petitioner from the date of filing of petition before the Court below. The respondent shall effect monthly payment of maintenance on or before 5th of every succeeding month. The arrears of maintenance may be paid within a period of six months. Petitioner is entitled to withdraw the maintenance sums deposited on due application.

8. This revision petition accordingly is disposed of. Connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

dpq
To

- 1.The Judicial Magistrate No.II, Mannargudi.
2.The Public Prosecutor, High Court, Madras-104.

+2cc to M/S.R.V.Rajasekaran, Advocate Sr.73481
+1cc to M/S.Swami Subramanian, Advocate Sr.74198

Cr1.R.C.No. 924 of 2015

ala[col]
srg 31/01/2017