

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.R.C.No.1212 of 2012
and M.P.No.1 of 2012

G.Mohanasundaram

.. Petitioner

Vs.

Vijayalakshmi

.. Respondent

This Criminal revision is filed under Section 397 r/w 401 of Cr.P.C., against the order, dated 25.11.2011 in C.R.P.No.69 of 2011 on the file of Additional District Sessions Judge, (Fast Track Court No.1), Coimbatore reversing the order, dated 10.12.2010 passed in M.C.No.3 of 2006 on the file of the Judicial Magistrate, Mettupalayam.

For Petitioner : Mr.S.Vinothkumar for
Mr.K.Govi Ganesan
For Respondent : Mr.Guruprasad

O R D E R

An husband relentlessly fights against his wife.

2. Now, the fight has become as between an ex-husband and an ex-wife.

3. The husband against whom order, dated 25.11.2011 passed by the learned Additional Sessions Judge, (Fast Track Court No.1), Coimbatore in C.R.P.No.69 of 2011 is the revision petitioner.

4. On 20.5.2005, the marriage between the revision petitioner and the respondent took place in Mettupalayam in Coimbatore district. Unfortunately, they have no issues, but have issues. In the circumstances, the respondent came back to her parents' house on 9.7.2005. There were exchange of notices. Thereafter, she sought for maintenance under Section 125 Cr.P.C. in M.C.No.3 of 2006.

5. The husband opposed it tooth and nail. He stated that in marrying the respondent he has been fooled. The respondent was dumped on his head. He was shocked to learn that she is afflicted with some disease and it blocked their fruitful matrimonial life. Surgical treatment was given to her. It was over. However, his agony is not yet over. She did not join him inspite of his call through a lawyer's notice. She had withdrawn her society from him without sufficient cause. So, she is not entitle to maintenance.

6. The wife examined herself as P.W.1. P.W.2 also has been examined. Ex.P1 to P3 were marked. The revision petitioner/ husband has been examined as D.W.1. He also examined Dr.Lalitha as D.W.2. He had also marked Ex.R1 to R11.

7. The learned Magistrate considering the oral and documentary evidence referring to Section 125(4) Cr.P.C. held that she is not entitled to maintenance and thus, dismissed her petition.

8. The disappointed woman went in revision to the Additional Sessions Court (F.T.C.No.I), Coimbatore in CrI.R.C.No.69 of 2011.

9. The revisional Court took the view that the husband is bound to maintain his wife and directed him to pay Rs.2000/- p.m. from the date of her maintenance petition.

10. Now, the defeated husband is before us.

11. The learned counsel for the revision petitioner would contend that if only when the wife was deserted or neglected by her husband and she has no means to maintain herself, the husband could be asked to pay her maintenance. However, in this case, inspite of notice/Ex.R1, she did not join him. She gave an evasive reply/Ex.R3. She sought for adjournment. Adjournment was over. But his agony is not over.

12. The learned counsel for the revision petitioner would further contend that as she had withdrawn her society from him without any reason as per Section 125(4) Cr.P.C. she is not entitled to maintenance. Thus, the view of the learned Magistrate cannot be faulted.

13. On the other hand, the learned counsel for the respondent would contend that actually, the revision petitioner is a schemy man. Really, he has no intention to live with her. His only intention is to avoid his discharge of matrimonial obligation. He misread Ex.R3/reply. She never said that she will not join him. In view of her precarious health condition, she sought for some time to recoupe herself and that cannot be refusal to live with him.

14. The learned counsel for the respondent would further contend that the revision petitioner dragged his wife, father-in-law and mother-in-law as accused to a Magistrate's Court. On the one hand, he fights with her in a Magistrate's Court as an accused and on the other hand, he says that she refused to join with him. He blow hot and cold at the same time. Having found the fallacy in the order of the learned Magistrate, the revisional Court rightly corrected it and directed him to pay her maintenance.

15. We put our heart and mind to the core of the matter, the submissions of both sides, perused the impugned orders and the entire materials on record.

16. As per Section 125(1) Cr.P.C. when an husband inspite of having means refuses or neglects to maintain his wife, who is unable to maintain herself the husband can be directed to pay her maintenance. It is a statutory measure to protect her from vagrancy.

17. The grievance of the revision petitioner is that he is yearning for her but she is not, he wish to have her company but she wish to bid her company. To buttress his such view, he refers to Ex.R1 and R-3.

18. We must see certain events in this case. The revision petitioner felt that he has been fooled by his father-in-law as he has dumped his daughter on his head suppressing her suffering certain disease. It is seen that she underwent surgical treatment. When she was in convalescent stage and not fully recovered Ex.R1 was issued by the revision petitioner calling her to his home. She gave Ex.R3 reply that on account of her poor health condition, she need some time to join him. She did not reject his offer to join with him. However, Ex.R3 has been misread by the learned Magistrate as an affront to the appeal of her husband in Ex.R1 and denied her maintenance, this is not correct and this has been rightly corrected by the revisional Court.

19. On 20.5.2005, their marriage took place. Matrimonial discordance arose between them. She had gone to her parents house on 9.7.2005. Thereafter, her surgical treatment took place. He filed C.C.No.54 of 2006 making his wife and her parents as accused. Naturally, she will be upset. In the meanwhile, she had also lost her father. In the circumstances, she had decided to bid goodbye to him. She filed H.M.O.P.No.66 of 2005 for divorce. On 5.10.2006 their marriage was dissolved. They have become no longer husband and wife.

20. When the wife refuses to live with her husband without sufficient cause, the husband can deny her maintenance under section 125(4) Cr.P.C. Section 125(4) Cr.P.C. acts as an exception to Section 125(1) Cr.P.C.

21. In Rohtash Singh Vs. Ramendri & others (2000(3) SCC 180) the Hon'ble Supreme Court held that Section 125(4) Cr.P.C. can be invoked as long as the marital relationship subsists, namely, the status of husband and wife subsists, when it is cut by a decree of divorce, Section 125(4) Cr.P.C. will not be applicable.

22. Rohtash Singh case (supra) has been followed by this Court in R.Mathialagan vs Ravichandrika (CDJ 2015 MHC 9803).

23. Section 125(1) Cr.P.C. speaks about wife. The word 'wife' has been explained in Section 125(1) (b) Cr.P.C. in an inclusive way. A wife who has obtained divorce or who has been divorced by her husband will also be 'wife' for the purpose of Section 125(1) Cr.P.C. Once she is divorced, she will become 'wife' under Section 125(1) (b) Cr.P.C. And she is entitled to claim maintenance from her ex-husband. In such view of the matter, the revision petitioner is bound to pay her maintenance.

24. In view of the foregoing, we are not to upset the order of the learned revisional Court.

25. Thus, this revision fails and it is dismissed. Consequently, M.P.No.1 of 2012 is closed.

26. We are very much pained to note that the respondent/wife has sought for maintenance under Section 125(1) Cr.P.C. as early as on 8.3.2006. It was disposed of by the learned Judicial Magistrate, Mettupalayam only on 10.12.2010. It was nearly after 4-1/2 years. The Criminal revision against the said order was disposed of by the learned Additional Sessions Judge on 25.11.2011. It is after one more year. Thus, this revision. It has been disposed of today. It is after 4 years. So, totally the woman has to fight in the Courts for 10 years to get a paltry sum of Rs.2000/- per month as maintenance from her husband, now ex-husband. This is a classic case of Law's delay. All the Stakeholders in the Justice delivery system contributed to this. Law is good. But it is a system failure. I have no face to face her.

27. Actually, the object of introducing Sec.125 in the Code of Criminal Procedure, 1973 has been thwarted. It is intended to protect the affected Wives, children and aged parents from vagrancy. The framers of the Code wanted to give them quick and cheap legal remedy. It is to be disposed of in a

summary manner. But nobody thought that the Courts would take a decade to dispose of these maintenance matters.

28. I am very sorry for this sorry state of affairs. This must change. The change would come if only all of us put in a collaborative effort. Then alone sufferings of these affected citizens would be properly addressed. In these maintenance matters, Courts should avoid procrastination and provide them speedy justice.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Principal Sessions Judge, Coimbatore
2. The Additional Sessions Judge, (Fast Track Court No.1), Coimbatore
3. The Chief Judicial Magistrate, Coimbatore
4. The Judicial Magistrate, Mettupalayam, Coimbatore district.

Copy to

The Director,
The Tamilnadu State Judicial Academy,
R.A.Puram,
Chennai 28.

+1 cc to Mr.K.Govi Ganesan Advocate sr 69855

+1 cc to Mr.M.Guruprasad Advocate sr 69881

सत्यमेव जयते

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