

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

CrI.R.C.No.1040 of 2016

and

CrI.M.P.No.8687 of 2016

R.Gopalakrishnan ...Petitioner/Respondent

Vs.

K.Lakshmi ...Respondent/Petitioner

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of the Code of Criminal Procedure, against the order passed in F.C.M.C.No.104 of 2014, dated 23.09.2015 by the Chief Judicial Magistrate Court, and the same was transferred before the I Additional District and Sessions Family Court, Vellore.

For Petitioner : Mr.E.Giri Rajan
For Respondent : Mr.S.Senthamil Selvan

ORDER

This Criminal Revision Case is directed against the order dated 23.09.2015 passed by the learned Judge of the Family Court, Vellore, in F.C.M.C.No.104 of 2014.

2. The facts leading to the present petition is that the revision petitioner and the respondent are the husband and wife and their marriage took place on 07.07.1995. Since the revision petitioner has not maintained his wife, the respondent/wife has filed a petition in F.C.M.C.No.104 of 2014 before the trial Court seeking maintenance of Rs.7,000/- per month. The trial Court, after considering the arguments made on either side, directed the respondent therein/revision petitioner to pay a sum of Rs.2,400/- per month towards maintenance from the date of petition on or before 5th of every English Calendar month. As against the said order, the present criminal revision case is filed by the revision petitioner/husband before this Court.

3. The learned counsel for the petitioner would mainly contend that the trial Court, without considering the facts and circumstances of the case, erroneously allowed the petition filed by the respondent herein/wife and directed the revision petitioner/husband to pay a sum of Rs.2,400/- per

month to the respondent herein/wife. It is further contended that the trial Court has not considered the fact that the marriage was dissolved by granting divorce based on the grounds of adultery, cruelty and desertion by the order made on 17.12.2012 in HMCMA No.4 of 2010 by the learned I Additional District and Sessions Judge, Vellore. As per Section 125(4) of Cr.P.C, when the wife is living a life in adultery, she is not entitled to get maintenance from her husband and hence, the learned counsel for the petitioner prayed that the order of the trial Court may be set aside and the criminal revision case may be allowed.

4. The learned counsel for the respondent would contend that the trial Court, after considering the facts and circumstances of the case, correctly passed order awarding a sum of Rs.2,400/- per month to the respondent/wife towards maintenance and therefore, there is no infirmity or illegality in the order passed by the trial Court. Hence, the criminal revision case has to be dismissed.

5. In this case, it is admitted by both parties that the revision petitioner and the respondent are the husband and wife and the revision petitioner has filed a petition in H.M.O.P.No.67 of 2001 before the Subordinate Court, Vellore, Vellore District, praying for a judgment and decree in favour of the revision petitioner (a) dissolving the marriage subsisting between the petitioner and the respondent and (b) directing the respondent/wife to pay the costs of these proceedings. The learned Subordinate Judge, Vellore, after hearing both sides, dismissed the said petition by order dated 27.01.2010. As against the said dismissal order, the revision petitioner/husband had preferred an appeal in H.M.C.M.A. No.04 of 2010 before the learned I Additional District and Sessions Judge, Vellore, Vellore District, and the learned I Additional District and Sessions Judge, after hearing both the parties, finally allowed the said appeal and granted decree of divorce on 17.12.2012. In the judgment passed in H.M.C.M.A.No.04 of 2010, at paragraph No.12, the learned I Additional District Judge, has stated as follows:-

"12. During the enquiry of this appeal, the appellant/petitioner/husband filed I.A.106/2010 and prayed to receive a set of documents which were furnished by the All Women Police, Vellore under the Right of Information Act as additional evidence on his side and the petition was allowed. The materials placed before us clearly disclosed that the case of the petitioner/husband is proved and that he is entitled for the relief of divorce on the grounds of adultery, cruelty and desertion. The finding of the learned Subordinate Judge, Vellore, is improper and thus the dismissal order passed by the learned Subordinate Judge, Vellore, in this case is liable to be set aside."

6. In this case, it is admitted by the learned counsel for the respondent/wife that as against the order passed by the learned I Additional District Judge, Vellore, in granting decree of divorce on the grounds of adultery, cruelty and desertion, no appeal or revision was filed by the respondent/wife. In this case, it is useful to extract Section 125 of Cr.P.C. which reads as follows:-

"125. Order for maintenance of wives, children and parents.- (1) If any person having sufficient means neglects or refuses to maintain-

(a) His wife, unable to maintain herself, or

(b) His legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) His legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) His father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct.

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.- For the purposes of this Chapter,-

(a) "Minor" means a person who, under the provisions of the Indian Majority Act, 1975 (9 of 1875) is deemed not to have attained his majority;

(b) "Wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

[(2) Any such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.]

(3) Person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for whole, or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made;

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any

sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to, live with her, husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

7. Further, in this case, the respondent/wife is living in adultery and the same is clearly established by the revision petitioner. Hence, this Court is of the considered view that since the respondent/wife is living in adultery and it was also clearly proved by the revision petitioner/husband, the respondent/wife is not entitled for any maintenance from the revision petitioner. Hence, the order passed by the Family Court, Vellore, awarding Rs.2,400/- per month towards maintenance to the respondent/wife is liable to be set aside.

8. In the result, the Criminal Revision Case is allowed and the order passed by the Family Court, Vellore, in F.C.M.C.No.104 of 2014, dated 23.09.2015 is set aside. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Jr1
To

1. The Family Court, Vellore.
2. The Additional District and Sessions Family Court, Vellore.

+1cc to Mr.S. Senthamil Selvan, Advocate, S.R.No.53521
+2ccs to Mr.E. Girirajan, Advocate, S.R.No.53577

CA(CO)
EU(05/10/2016)

Cr1.R.C.No.1040 of 2016