

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.09.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Cr1.R.C.No.772 of 2009

Hemamalini

.. Petitioner

Vs.

C.M.Suresh

.. Respondent

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 06.07.2009 passed in MC.No.4 of 2008 on the file of Chief Judicial Magistrate, Vellore.

For Petitioner : Mr.R.Margabandhu

For Respondent : Mr.E.Kannadasan

ORDER

This Criminal Revision is directed against the order passed by the learned Chief Judicial Magistrate, Vellore made in MC.No.4 of 2008 dated 06.07.2009, dismissing the maintenance application filed by the revision petitioner.

2.It is admitted by both sides that the revision petitioner is the legally wedded wife of the respondent. The said marriage was held on 24.01.1999 at Sri Ragavendra Kalyana Mandapam, Vellore according to Hindu rites and customs. Since, the marriage is admitted, the respondent/husband is liable to maintain her wife. The wife filed divorce petition, the same was dismissed, after dismissal of the divorce petition, the present maintenance petition was filed, the trial Court ought to have noted the dowry harassment and divorce, are the sufficient cause for claiming maintenance, without considering the said fact, the trial Court erroneously dismissed the application, the trial Court further failed to consider that the respondent is earning Rs.9,000/-p.m. and he is liable to pay maintenance. Hence, the learned counsel prays to set aside the order of the trial Court and the allow the revision petition.

3.In support of his contentions, the learned counsel for the petitioner also relied on the following citation :-

(i)1995 CRL.L.J. 3526 - Arana Kar v. Dr.Sarat Kumar Dash alias Nachhi, wherein paragraph 7 of the order which reads it as follows :-

"7. I find that in paragraph 3 of the petition the opposite party has relied on the facts of the unchastity of wife and in paragraph 6 thereof, he has reiterated the fact that she is living separately and leading an adulterous life. The effect of this is that if this fact is not proved then the wife gets justification for living separate from the husband and also gets grounds for claiming maintenance in that case. They have not been considered and decided by the Family Court".

(ii)1996 CRL.LJ.745 - Durga Shankar v. Smt.Dhapu Bai - Wherein in paragraph 6, the Rajasthan High Court held as follows:-

"6. It is true that adultery cannot be proved by direct evidence and only an inference can be drawn regarding adultery from the attending circumstances. But the person, who alleges that the another party had been living in adultery, has to prove, from the attending circumstances with a clear, cogent and convincing evidence which admits one and only one inference that the other party is living in adultery. If it is proved from the attending circumstances by clear, cogent and convincing evidence then only the evidence, produced by the petitioner-husband, which has been discussed above, the petitioner has failed to prove the allegation of adultery against his wife Smt.Dhapu Bai while Smt.Dhapu Bai has been able to prove, from the convincing evidence that she was subjected to cruelty and was forcibly turned out from the house by the husband and her husband, also, levelled wild allegations regarding her character. As the petitioner-husband had levelled allegations impeaching the character of Smt.Dhapu Bai that she was having illicit relations with Prem Shanker and as the applicant has been able to prove the cruel treatment of the husband and turning her out from his house, she had justified reasons to live separately from the husband. The learned judge of the Family Court has therefore, not committed any illegality in allowing the application filed by the applicants regarding the grant of maintenance to them."

(iii)1997 CRL.LJ.3981 - Sou.Janabai Pandit Pawar v. Pandit Shamji Pawar and others - it is held in paragraph 2 of the said order which reads as follows :-

"2.She could not continue with her husband and she stayed along with her son-in-law, I do not agree with the submission advanced by the learned Counsel for the respondent. Under Section 125 of the Code of Criminal Procedure, it is the obligation of

the husband to maintain his wife. Simply because wife could not make an application for maintenance for a long period will not disentitle her for claiming maintenance. It may be that she was not required any help from the husband for her maintenance because of the then circumstances existing. But after the changed circumstances as she was not in a position to maintain herself, she could approach the Magistrate Court under Section 125 of the Code of Criminal Procedure. The law of limitation will not apply in such circumstances."

The above said decisions relied on by the learned counsel for the petitioner are not applicable to the facts of the present case.

4.The learned counsel for the respondent would mainly contend that the trial Court after considering the facts and circumstances of the case, comes to a conclusion that the petitioner is not entitled for any maintenance amount, since she voluntarily left the matrimonial home and she has not demanded any maintenance amount so far, and she come with the petition at the very belated stage after lapse of several years. The respondent is also not earning any income, hence the trial Court after considering the facts and circumstances of the case comes to a correct conclusion and dismissed the petition and there is no illegality or infirmity in the order passed by the trial Court and the learned counsel prays for dismissal of the revision petition.

5.It is admitted by both sides that the marriage between the petitioner and the respondent took place on 24.01.1999 @ Sri Ragavendra Kalyana Mandapam, Vellore, according to Hindu rites and customs. After the marriage, the petitioner lived with her husband only for few days. Further admitted that the respondent/husband filed HMOP.No.80 of 2002 before the Sub Court, Vellore for dissolving the marriage between the petitioner and the respondent and to grant divorce. The petition came to be filed by the respondent on 29.07.2002 within three years from the date of marriage. In the said HMOP the petitioner herein filed IA.No.69 of 2002 claiming interim maintenance of Rs.8,000/-p.m. and Rs.10,000/- towards legal expenses and the said application was allowed on 16.12.2004 directing the respondent/husband to pay a sum of Rs.1,000/-p.m. as interim maintenance and Rs.4,000/- towards legal expenses to the wife. The respondent/husband preferred HMOP.No.102 of 2010 before the Sub Judge, Vellore, the same was dismissed on 11.03.2013. Aggrieved against the said orde,r the respondent/husband preferred appeal in HMCMA.No.6 of 2013 before the Principal District Judge, Vellore, the learned appellate Court in its judgment at paragraphs 6 and 7 observed as follows :-

"6)Point :-

The appellant is the husband and the respondent is the wife. There is no dispute that the marriage between them was held on 24.01.1999. Due to misunderstanding in between them, the husband filed HMOP.80/2002 as against his wife and seeking divorce U/s.13(1) (i-a) (i-b) of Hindu Marriage Act 1955. Pending the HMOP, the respondent filed a petition seeking interim maintenance, and the same was allowed. But the husband failed to pay the interim maintenance and thereby the said HMOP.80/2002 was dismissed. The petitioner/appellant/husband did not prefer any appeal as against the order of the Subordinate Judge, Vellore in HMOP.80/2002 dated 21.03.2006.

7) Subsequently, the Husband filed HMOP.127/2009 as against his wife, U/w.13(1) (i-a) (i-b) of the Hindu Marriage Act. Pending the above appeal, the Husband not pressed the above petition and hence the said HMOP.127/2009 was dismissed. Thereafter, he filed another HMOP.102/2010 as against his wife under the same provision U/s.13(1) (i-a) (i-b) of Hindu Marriage Act and after contest, the same was dismissed. As against the order passed in the above HMOP.102/2010, the husband preferred this appeal. Once a petition was dismissed in HMOP.80/2002 dated 21.03.2006, which he filed U/s.13(1) (i-a) (i-d) on Hindu Marriage Act 1958, again for the same reason for same section, the husband is not entitled to file another HMOP.No.102/2010. Thereafter, a petition filed U/s.13(1) (i-a) (i-b) in HMOP.102/2010 is itself void abinitio."

6. On reading of the above judgment of the learned Principal District Judge, Vellore, it is clearly proved that interim maintenance was awarded to the revision petitioner at Rs.1,000/- p.m. and Rs.4,000/- towards legal expenses in HMOP.No.102/2010 and the respondent/husband failed to pay the said interim maintenance. Subsequently, the HMOP.No.80 of 2002 was dismissed by the learned Sub Judge, Vellore on 21.03.2006, the respondent/husband has not preferred any appeal against the said order. Thereafter, the respondent/husband filed HMOP.No.127 of 2009 and was dismissed as not pressed. Thereupon, the respondent/husband filed HMOP.No.102 of 2010 under the same provisions against the wife, the same was dismissed by the Sub Court, Vellore, against the order of dismissal the petitioner filed HMCMA.No.6 of 2013 before the learned Principal District Judge, Vellore, the same was also dismissed confirming the order of the trial Court in HMOP.No.102 of 2010.

7. The revision petitioner filed IA.No.69 of 2002 in HMOP.No.80 of 2002 for interim maintenance, the respondent/husband filed HMOP.No.80 of 2002 for divorce, within

three years from the date of the marriage. The IA.No.69 of 2002 was allowed directing the respondent/husband to pay interim maintenance of Rs.1,000/- p.m. and Rs.4,000/- towards legal expenses and the HMOP.No.80 of 2002 is dismissed on 21.03.2006. Subsequently, the husband preferred one after another petition, the revision petitioner/wife is taking appropriate steps to claim maintenance from the year 2002 onwards, there is long lapse of years for claiming maintenance.

8.The learned counsel for the respondent submits that the respondent is earning Rs.9,000/-p.m. and he is not able to maintain his wife. The next contention of the respondent is that the petitioner is not able to prove that the respondent is earning Rs.15,000/-p.m. The respondent submits that it is not sufficient to run his life and he has to maintain his aged mother and prays for dismissal of the revision petition. The petitioner has not produced any proof to show that the respondent is earning Rs.18,000/-p.m. Both the parties have not produced any document to show the income of the respondent.

9.In view of the above fact, this Court presume that the respondent husband is earning Rs.18,000/-p.m. The respondent husband himself admitted that he is earning salary of Rs.9,000/-p.m. and it is just and proper to maintain his wife/revision petitioner. Since, the marriage between the husband and wife was not divorced by the competent Court, the respondent is liable to maintain his wife. This Court directs the respondent/husband to pay a sum of Rs.3,000/-p.m. towards maintenance to the revision petitioner/wife from the date of petition i.e, 07.01.2008. During the course of cross examination, RW1 in the witness box categorically admitted that -

"நான் ஆர்டர்ஸ் பேக்டரியில் சீனியர் தொழிலாளியாக இருக்கிறேன் என்றால் சரியல்ல. சாதாரண தொழிலாளியாக தான் வேலை செய்கிறேன். நான் மாதம் ரூ.17,000 சம்பாதித்து வருகிறேன் என்றால் சரியல்ல. மொத்தம் ரூ.9000 தான் வாங்கிவருகிறேன். பிடித்தம் போக மாதம் ரூ.5000 தான் சம்பளம் வாங்குகிறேன்."

10.Considering the facts and circumstances of the case, this Court is inclined to direct the respondent/husband to pay the monthly maintenance of Rs.3,000/-p.m. to the petitioner/wife from the date of petition i.e, 07.01.2008. The respondent/husband is directed to pay the arrears of maintenance amount within three months from the date of receipt of copy of this order and further directed to pay the regular monthly maintenance of Rs.3,000/-p.m. on or before 10th of every English Calendar month.

11.With the above observation, the criminal revision is allowed and the order dated 06.07.2009 made in MC.No.4 of 2008 on the file of Chief Judicial Magistrate, Vellore is hereby set aside, directing the respondent to pay a sum of Rs.3,000/-p.m. towards maintenance from the date of petition and directed to pay the arrears of maintenance within three months from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

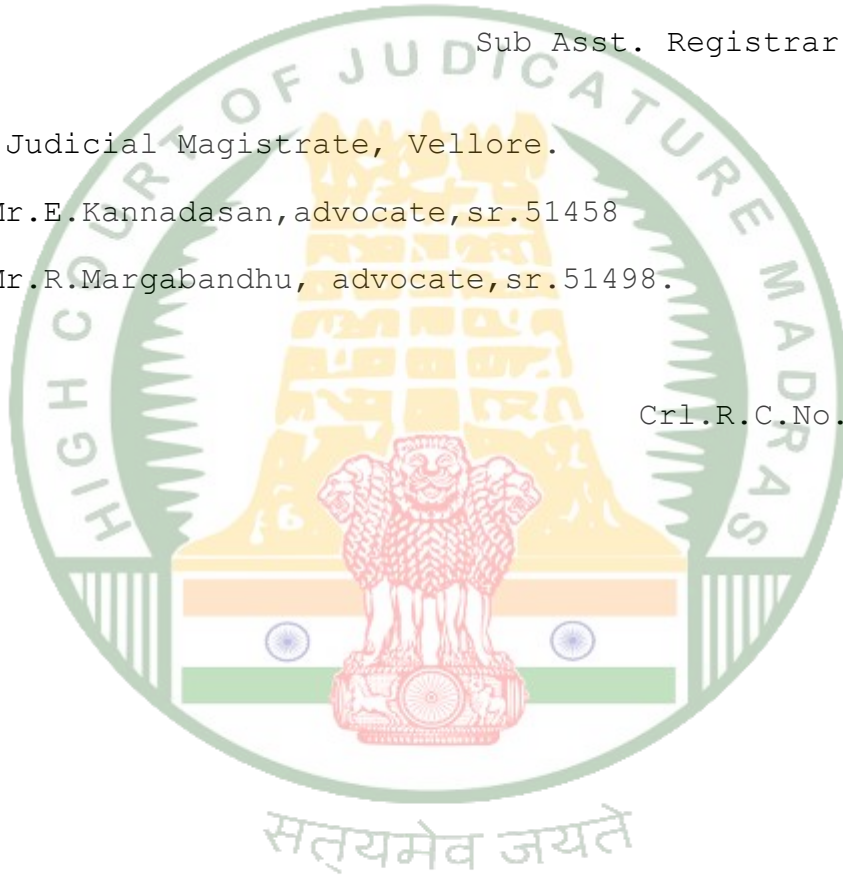
The Chief Judicial Magistrate, Vellore.

+1 cc to Mr.E.Kannadasan,advocate,sr.51458

+1 cc to Mr.R.Margabandhu, advocate,sr.51498.

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krd 27/9+

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