



FBEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON: 04.01.2016

ORDERS DELIVERED ON: 12.01.2016

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Crl.R.C. (MD).No.533 of 2014

1.Kalaiselvi

2.Minor Hemasundar

: Petitioners/Respondents/
Petitioners

Vs.

V.Kannan

: Respondent/Petitioner/
Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records pertaining to Crl.R.P.No.36 of 2012, dated 16.09.2014 passed by the Learned II Additional District and Sessions Judge, Thanjavur and set aside the same and to confirm the order passed in M.C.No.2 of 2011, dated 06.09.2012 by the Learned Judicial Magistrate No.I, Thanjavur.

For Petitioners : Mr.G.Karnan

For Respondent : Mr.T.A.Ebenezer

ORDER

The Revision Petitioners/Respondents/Petitioners have preferred the instant Criminal Revision Petition before this Court, as against the order, dated 16.09.2014 in Crl.R.P.No.36 of 2012 passed by the Learned II Additional District and Sessions Judge, Thanjavur.

2.The Learned II Additional District and Sessions Judge, Thanjavur, while passing the impugned order, dated 16.09.2014, in Crl.R.P.No.36 of 2012 (filed by the Respondent/Husband) at paragraph Nos.10 and 11 had observed the following:-

"10.The trial Court has fixed the maintenance at the rate of Rs.2,500/- per head. Now a days the cost of living is very high. For an ordinary adult human being to eat three times minimum Rs.100/- is necessary. Without Rs.100/- per head an adult human being cannot eat for three times. On that ground for 30 days the adult human being requires Rs.3,000/- per month. But the trial Court has fixed the maintenance amount at the rate of Rs.2,500/- only. Regarding the 2nd Petitioner is concerned as a minor he requires 50% of the above said amount. So, he requires Rs.1,500/- per month. While fixing maintenance the income of the Respondent has to be taken into account. On the side of the Petitioner, there is no proof was filed for earning capacity of the Respondent. Admittedly, the Respondent worked at abroad for sufficient period and no proof was filed for sending of money to



the Petitioner. In such circumstances, there is a probabilities for having sufficient money in the hands of the Respondent. Even otherwise while Respondent is hale and healthy he is bound to work for the Petitioners to given maintenance. So, the Respondent is bound to pay the maintenance at the rate of Rs.3,000/- per month for the first Petitioner and Rs.1,500/- per month for the 2nd Petitioner.

11.Regarding the educational expenses and festival expenses Rs.10,000/- each per annum is highly excessive. The Petitioners have not demanded on that grounds in their petition. Regarding education expenses is concerned it is reasonable. So, the award with regard to festival expenses is concerned it has to be fixed depends upon the income of the Respondent. When there is no proof for income of the Respondent the awarding of festival expenses is only luxurious one. So, the Petitioners are entitled to get permanent alimony u/s.25 of Hindu Marriage Act by providing sufficient evidences and get the same from the properties of the Respondent. For alimony relief is concerned by invoking Sec.125 of Cr.P.C. is concerned atleast necessary expenses for the livelihood have to be allowed. Hence, this Court is inclined to modify the award on considering the income of the Respondent. The point is answered accordingly."

and resultantly, allowed the Crl.R.P.No.36 of 2012 in part by modifying the award of maintenance granted by the trial Court in M.C.No.2 of 2011 dated 06.09.2012.

3.Added further, the Learned II Additional District and Sessions Judge, Thanjavur while allowing the Crl.R.P.No.36 of 2012 in part had passed the order by awarding maintenance sum of Rs.3,000/- p.m. to the First Revision Petitioner/wife and awarded a sum of Rs.1,500/- p.m. to the Second Revision Petitioner/son (minor son) and further confirmed the trial Court's order in regard to the sum awarded towards educational expenses in respect of the Second Revision Petitioner/son. In fact, the Learned II Additional District and Sessions Judge, Thanjavur set aside the order in regard to the grant of festival expenses by the trial Court.

4.Challenging the order, dated 16.09.2014, in Crl.R.P.No.36 of 2012 passed by the Learned II Additional District and Sessions Judge, Thanjavur in modifying the order passed by the Learned Judicial Magistrate No.I, Thanjavur in M.C.No.2 of 2011, dated 06.09.2012, the Revision Petitioners (wife and minor son) have preferred the instant Criminal Revision Petition before this Court on the ground that the Learned II Additional District and Sessions Judge, Thanjavur had failed to consider that the minor Petitioner is studying in school and therefore educational expenditure is to be taken into consideration and further that without assigning any valid reason, for deduction of maintenance amount, against the minor Petitioner, the Learned II Additional District and Sessions Judge has passed the impugned order in Crl.R.P.No.36 of 2012.

5.It is represented on behalf of the Revision Petitioners that the Learned II Additional District and Sessions Judge, had failed to consider that the Respondent/Husband had not disproved his income position. Lastly, it is plea of the Revision Petitioners that the Learned II Additional District and Sessions Judge, Thanjavur had failed to consider that the trial Court after considering the entire evidence as well as the



facts of the case awarded maintenance to the Revision Petitioners and the same should not have been interfered with by passing the impugned order in Crl.R.P.No.36 of 2012.

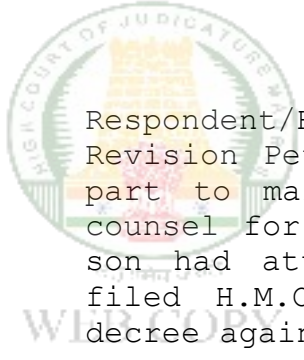
6.The Learned counsel for the Revision Petitioners cites the order of this Court, dated 11.02.2015 in Crl.R.C.No.48 of 2015 between **S.PAVUNRAJ v. VANAROJA**, whereby and where under at paragraph Nos.8 to 10, it is observed and held as follows:-

"8.Though the Revision Petitioner is suffering and declared as HIV Positive patient, the fact remains that he is not disputing the marriage and parentage of three children and only points urged by the Learned counsel appearing for the Revision Petitioner are that the award of a sum of Rs.1,000/- per month towards rent is unsustainable for the reason that the Respondent is residing in the own premises and the lump sum of Rs.10,000/- per year awarded to two children towards educational expenses and a sum of Rs.15,000/- awarded towards medical and festival expenses are unsustainable.

9.This Court can take judicial notice of the fact that cost of living is increasing day-by-day on account of inflationary trend and though the Respondent has got the favourable order for restitution of conjugal rights, the Revision Petitioner did not chose to join with her company and admittedly, the Respondent is maintaining her three children and also educating them. It is the submission of the Learned counsel appearing for the Revision Petitioner that since the Respondent is residing in the own premises, she is not entitled to a sum of Rs.1000/- per month towards rent and in response to the same, the Learned counsel appearing for the Respondent would contend that the said property was mortgaged to the Bank by the Revision Petitioner and recovery action is also taken. But the fact remains that the Respondent is residing in the own premises and therefore, a sum of Rs.1,000/- awarded by way of monthly rent is unsustainable. In so far as a sum of Rs.10,000/- per year awarded to two children for meeting out educational expenses, this Court is of the view that being a parent, the Revision Petitioner is also bound to maintain and educate the children so that they can come up in their life. Therefore, the said sum of Rs.10,000/- awarded per year cannot be said to be improper. Insofar as the award of a sum of Rs.15,000/- per year for meeting out the medical and festival expenses for the Respondent and her three children are concerned, this Court is of the view that it could be reduced to Rs.10,000/- per year. The award at the rate of Rs.2,000/- per month to two minor children in the considered opinion of this Court cannot be said to be exorbitant.

10.In the result, the revision petition is partly allowed and the impugned order dated 19.04.2013 is modified to the effect that the Respondent is not entitled to a sum of Rs.1000/- per month towards rent, and the medical and festival expenditure of a sum of Rs.15,000/- per year is reduced to a sum of Rs.10,000/- per year and in all other respect, the award of maintenance passed by the trial Court is confirmed. Consequently, connected Miscellaneous Petition is closed."

7.Per contra, it is the submission of the Learned counsel for the



Respondent/Husband that the Respondent/Husband has not neglected the Revision Petitioners (wife and son) and also there is no refusal on his part to maintain them. Further, it is the contention of the Learned counsel for the Respondent that now the Second Revision Petitioner/minor son had attained majority and that the First Revision Petitioner had filed H.M.O.P.No.39 of 2011 seeking divorce and obtained an *exparte* decree against the Respondent/Husband.

8.Advancing his arguments, the Learned counsel for the Respondent proceeds to take a plea that the Respondent/Husband went abroad for employment and from and out of the income he earned, he purchased a landed property in the name of the First Revision Petitioner and that the Respondent/Husband is not doing any real estate business or letting out the vessels on hire/rent. Further more, he is not earning Rs.1 lakh per month and since he is without employment, he is leading difficult life. Moreover, the First Revision Petitioner without any basis or reason is living separately from the Respondent/Husband.

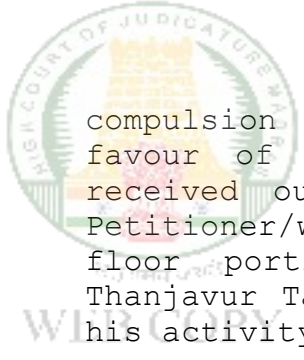
9.Before the trial Court in M.C.No.2 of 2011, the Revision Petitioners/Petitioners had averred that the marriage between the First Revision Petitioner and the Respondent took place on 04.07.1991 at Mariamman Temple as per Hindu practice. Further, it was mentioned that at the time of marriage, the Respondent (Husband) was given a sum of Rs.6,000/- in cash towards the expenses relating to silk dhoti and shirt etc.

10.It is the plea of the First Revision Petitioner/wife that the entire marriage expenses was borne by her parents and also the seervarisai utensils were produced by her parents. As a result of the wedlock, the First Revision Petitioner gave birth to two sons viz., one Guru Prasath and Hema Sundar. The Second Revision Petitioner (son) was minor at the time of filing of the case in M.C.No.2 of 2011 on the file of the Learned Judicial Magistrate No.I, Thanjavur.

11.At this stage, this Court on perusal of the contents of petition in M.C.No.2 of 2011 pertinently points out that the First Revision Petitioner/wife had averred in her petition that from the beginning of her marriage life, the Respondent/Husband ill-treated her and also scolded her in unparliamentary words. Even in the presence of third parties, the First Revision Petitioner/wife was scolded by the Respondent/Husband. In spite of the same, the Revision Petitioner/wife was running the family in proper manner.

12.Added further, the First Revision Petitioner/wife in her petition in M.C.No.2 of 2011 on the file of the trial Court had also stated that the Respondent/Husband was having connection with several women and in spite of advice given by the elders in the house, there was no change in his activities. Moreover, the First Revision Petitioner's brother spent for sending the Respondent/Husband abroad and from the year 1992 till 2005, the Respondent/Husband was in abroad and during that period, he had not sent any money to the Petitioners' family.

13.According to the First Revision Petitioner/wife, at the beginning of marriage life, the Respondent/Husband compelled her to obtain money and jewels from her father's house and based on the



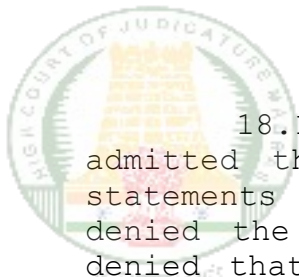
compulsion of the Respondent/Husband, her father purchased a land in favour of the First Revision Petitioner from and out of the money received out of retirement benefits. That apart, the First Revision Petitioner/wife's father gave Rs.50,000/- and took on 'othi', the ground floor portion at Mariamman kovil, Marungai road, Sivagami Nagar, Thanjavur Taluk. Even then, the Respondent/Husband without any change in his activity, daily had ill-treated the First Revision Petitioner/wife.

14. Apart from the above, it is the stand of the First Revision Petitioner in M.C.No.2 of 2011 (on the file of trial Court) that the Respondent/Husband daily came to the house in a drunken mood and except during the meals time, rest of the time, he loitered in the village and indulged in having wrong relationship with numerous women.

15. As a matter of fact, the First Revision Petitioner is living separately from the Respondent/Husband and she is maintaining her children by educating them in good school. However, the Respondent/Husband without any worries consumes liquor daily and living. The First Revision Petitioner for educating her children had taken loan of Rs.3 lakhs and with great difficulty educating her children and also she finds it difficult to run the family.

16. Besides that, the First Revision Petitioner/wife in M.C.No.2 of 2011 had proceeded to state that the Respondent/Husband with false information had filed H.M.O.P.No.86 of 2007 and in the said petition, in the mediation centre, the matter was compromised in and by which the Respondent had agreed to pay a sum of Rs.75,000/- to her. The Respondent/Husband had also agreed to pay the jewel loan mortgage amount obtained by the First Revision Petitioner/wife from the Syndicate bank. Based on that, the H.M.O.P.No.86 of 2007 was dismissed. Even then, there was no change in the activities of the Respondent/Husband and as usual he is leading a life by taking alcohol daily and having illegal relationship with women. Further, he has cheated her by not paying the amount as if no compromise was reached. The Respondent/Husband left the First Revision Petitioner/wife on 04.09.2009. Hence, the First Revision Petitioner/wife filed a divorce case against the Respondent/Husband.

17. The First Revision Petitioner's first male child is studying in Engineering College of Anna University at Rajamadam and her second minor son was studying 8th standard at Kalyansundaram Higher Secondary School, Thanjavur. For the children's education, she had taken loan and spending the amount. Further, the First Revision Petitioner is a house wife and that the Respondent/Husband by keeping the money earned in abroad and doing money lending business upto Rs.5 lakhs. Further through real estate business he earns Rs.50,000/- p.m. and through renting out the utensils at Mariamman temple, he earns a sum of Rs.20,000/- p.m. and in all he earns a sum of Rs.1 lakh p.m. Under these circumstances, the First Revision Petitioner/wife had claimed a sum of Rs.5,000/- p.m. towards maintenance and claimed a sum of Rs.3,000/- p.m. towards maintenance of the Second Revision Petitioner/son. Also, she claimed a sum of Rs.50,000/- per year for the Second Revision Petitioner/son's education fees and towards the First Revision Petitioner's elder son Guru Prasath's education fee, the First Revision Petitioner/wife had claimed a sum of Rs.50,000/- from the Respondent/Husband.



18. In the counter to M.C.No.2 of 2011, the Respondent/Husband admitted the marriage and the children born to her, but denied the statements relating to marriage expenses, seervarisai. Further, he had denied the allegations dubbing as drunkard and womaniser. He further denied that his father-in-law had given him Rs.50,000/- for 'othi' as pleaded by the First Revision Petitioner/wife and further that his wife's brother had not sent him abroad.

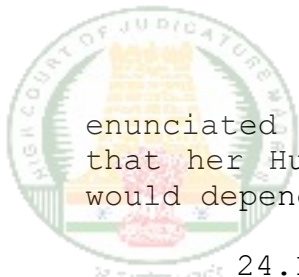
19. The case of the Respondent/Husband before the trial Court was that he had sent his entire income to the First Revision Petitioner/wife and she was in the habit of spending lavishly for her living. Further on his return from abroad, after forgiving his wife (First Revision Petitioner) took a house at Gnanam Nagar for 'othi' and was living there. In spite of the same, the First Revision Petitioner/wife had not changed her living style and she also denied to live with him. Although he filed H.M.O.P.No.86 of 2007 praying for restitution of conjugal rights and notwithstanding the fact a compromise was arrived at, the same could not yielded positive results. The First Revision Petitioner/wife by filing H.M.O.P.No.39 of 2011 had obtained an *exparte* divorce decree against him. The First Revision Petitioner/wife is the one, who had chosen to live separately from him. He is jobless at present and does not have means to meet his wife's maintenance demand.

20. In regard to the averment made by the Respondent/Husband in his counter that the First Revision Petitioner/wife had illicit relationship with many persons without pointing out the name of Srinivasana or any other individual, it is to be pointed out that there is always a presumption of innocence and it is for the Respondent/Husband to prove the allegations relied upon by him. It is true that direct proof of 'adultery' is not imperative. The circumstantial evidence in this regard can normally be expected in proof of the charge as 'adultery'. In reality, the circumstances should be such as to lead the fair inference as a necessary logical conclusion, in the considered opinion of this Court.

21. To put it succinctly, the circumstances ought to be such as would lead guarded Judgment of a reasonable or prudent man to come to a conclusion that a spouse is not entitled to an order/decreed based on the allegations arising out of suspicion created by attendant surrounding circumstances, for such allegations are to be proved. In short, the 'suspicion' is not enough to seek a remedy for 'adultery'. Undoubtedly, the charge of adultery is a serious allegation and it must be examined on the same basis like that of a criminal charge. It is also said to be a quasi criminal offence and should be established as such.

22. In so far as the instant case is concerned, even though the Respondent/Husband had levelled an allegation of adultery against the First Revision Petitioner/wife, he had failed to prove the same to the subjective satisfaction of this Court.

23. Coming to the aspect of 'inference' or 'refuses' to maintain employed in Section 125(1) of Cr.P.C., it is to be borne in mind that the said neglect or refusal to maintain may be by conduct or by words. Even it may be expressed or implied. The term 'negligence or refuses to maintain' is to be construed liberally. No set principles can be



enunciated to answer an issue whether the wife has been able to establish that her Husband had neglected or refused to maintain her. Certainly it would depend on the given facts and circumstances of each case.

24. It cannot be ignored that the word 'refuse' means a failure to maintain or a denial of obligation to maintain after demand. The word 'neglect' means a default or omission. In the absence of demand, even if a wife is living in the same house with the Husband, in case of neglect by her Husband, he is entitled to claim maintenance sum in terms of the ingredients of Section 125 of Cr.P.C. The words, 'wilful negligence' is a question of Law and the same is to be determined on given facts. A mere failure or omission to maintain a child may amount to neglect to maintain. For obtaining an order of maintenance one should establish that the individual, who bound to maintain, had neglected or refused to maintain him/her. Apart from the establishing that the Husband had sufficient means, it should further been exhibited that he had neglected or refused to maintain his wife.

25. In the instant case on hand, the trial Court came to the resultant conclusion that the First Revision Petitioner/wife was unable to maintain herself and the Second Revision Petitioner/son and that the Respondent/Husband had sufficient means to maintain them and since he had failed in this regard, it ordered the Respondent/Husband to pay a sum of Rs.2,500/- p.m. each, on or before 5th of every month and also awarded a sum of Rs.10,000/- p.a. towards education. In respect of the Second Revision Petitioner/son, till he completes his studies and also awarded a sum of Rs.10,000/- p.a. towards festival expenses from the date of petition. It also directed the arrears to be paid within three months.

26. The Revisional Court in Crl.R.P.No.36 of 2012 filed by the Respondent/Husband (as Revision Petitioner) had passed an order on 16.09.2014 by partly allowing the said Crl.R.P.No.36 of 2012 by holding that the First Revision Petitioner/wife is entitled to get maintenance at the rate of Rs.3,000/- p.m. and awarded a sum of Rs.1,500/- p.m. towards maintenance to the Second Revision Petitioner, but had confirmed the educational expenses amount determined by the trial Court.

27. Furthermore, the maintenance amount were ordered to be paid to the Revision Petitioners from the date of petition and it was directed that the maintenance amount was to be paid within 5th day of every English calendar month. However, the festival expenses of Rs.10,000/- p.a. granted by the trial Court was set aside.

28. If an individual has the requisite capacity to earn, he cannot shirk/escape his liability to maintain in terms of Section 125 of Cr.P.C. in the considered opinion of this Court. The presumption is that an able bodied and healthy individual is possessed of sufficient means and it is for him to establish by accident, decease or the conditions of the labour mark or otherwise he is not capable of earning anything, as per decision in **CHANDRA PRAKASH v. SHILA RANI** reported in **AIR 1960 Delhi 174**. When the Husband is an able bodied individual, it has to be inferred that he has means to pay the maintenance as per the decision in **ALI HOSSAI v. BABY FARIDA KHATON** reported in **1998 Crl.L.J. 2762 (2765) (cal.)**.

29. Indeed, the term 'unable to maintain herself' only denotes that



the wife has no other means or source to maintain herself, it has not relevance with her potential earning capacity. Inability of the wife to maintain herself cannot be judged, in the light of her capacity to make a living.

30. As far as the present case is concerned, there is no dispute to the effect that the Respondent/Husband was employed abroad for the period from 1993 till 2005 and there was no proof that the Respondent/Husband had sent money to the First Revision Petitioner/wife. At the time of return, the Respondent/Husband would have possessed sufficient money/resources in his hands. Inasmuch as he is an able bodied individual and he is bound to maintain the First Revision Petitioner/wife and as such, he is directed to pay a sum of Rs.3,000/- p.m. considering the spiralling rise in price and essential commodities, cost of living and inflation etc. In so far as the Second Revision Petitioner/son is concerned, the Respondent/Husband is directed to pay a sum of Rs.2,000/- p.m. from the date of filing of the petition in M.C.No.2 of 2011 on the file of trial Court. The aforesaid maintenance amounts ordered by this Court in this Criminal Revision Petition is to be paid by the Respondent/Husband on or before 5th of every English Calendar month. However, although the trial Court has awarded a sum of Rs.10,000/- p.a. towards festival expenses to the First Revision Petitioner/wife, the same was set aside by the Revisional Court in CrI.R.P.No.36 of 2012 and the order of said rejection in this regard is sustained by this Court. Furthermore, the educational expenses amount of Rs.10,000/- p.a. awarded to the Second Revision Petitioner/son by the trial Court till he completes his studies and as confirmed by the first Revisional Court, is not displaced by this Court.

31. With the aforesaid observations and directions, the Criminal Revision Petition is disposed of.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The II Additional District and Sessions Judge, Thanjavur.

2. The Judicial Magistrate No.I, Thanjavur.

+ 1 CC TO MR.G.KARNAN, ADVOCATE IN SR NO.2041/16

+ 1 CC TO MR.T.A.EBENEZER, ADVOCATE IN SR NO.2161/16

RJ2

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Pre-Delivery Order made in
CrI.R.C.(MD).No.533 of 2014
12.01.2016