



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.04.2016
CORAM

THE HONOURABLE MR. JUSTICE V.S. RAVI

Cr1.R.C. (MD).No.347 of 2015

WEB COPY

Kannan @ Thangasamy

. . . Revision Petitioner/Respondent

Vs.

1. Malathi
2. Minor Raja

(Respondent No.2 represented through the
first respondent, namely, the mother of the
respondent No.2)

. . . Respondents/Respondents

PRAYER : Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C, to call for the records relating to the order dated 30.03.2015 made in M.C.No.70 of 2014 on the file of the Family Court, Tirunelveli and to set aside the same and to pass such further orders as this Court may deem fit and proper in the nature and circumstances of the case.

For petitioner : Mr.S.P. Maharajan, Advocate

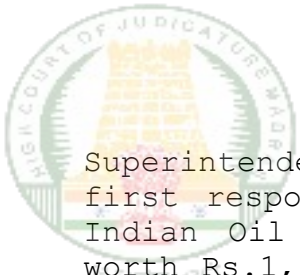
For respondents : Mr.G.Thalaimutharasu, Advocate

Order Reserved on : 18.02.2016

Order Pronounced on : 26.04.2016

ORDER

The revision petitioner is the husband of the first respondent. The respondent Nos.1 and 2 have filed M.C.No.4 of 2006, on 13.02.2006, before the learned Chief Judicial Magistrate, Thirunelveli, which has been transferred to the learned Family Court, Tirunelveli and renumbered as M.C.No.70 of 2014. The first respondent/wife has stated in M.C.No.70 of 2014 that the marriage between her and the revision petitioner viz., Kannan @ Thangasamy has been solemnized on 27.01.2005, before "Kuthuvilaku", before the relatives and elders, as per the Hindu rites and customs, at the house of the first respondent and at the time of marriage, as per the request of the revision petitioner, the first respondent's father has presented 7¼ sovereigns of golden jewels and thereafter, they have lived in Rajavallipuram and out of wedlock, one male child born on 19.10.2005 at Adimali Government Hospital and at that time, the revision petitioner and his parents have demanded 7 sovereigns of golden jewels and Rs.20,000/- as dowry and they have sent out the first respondent from their house and the parents of the first respondent are unable to give the said dowry and thereafter, the revision petitioner has scolded the first respondent and her parents, by using filthy language. Thereafter, the first respondent and her parents have stated to the revision petitioner that they would give the said dowry, within one year and however, the revision petitioner and his parents have tortured the first respondent, continuously and thereafter, the first respondent has lodged the Complaint to the learned



Superintendent of Police and the revision petitioner has not taken the first respondent, to his house. The revision petitioner is working in Indian Oil Corporation, Thatchanallur and he is owning three houses, worth Rs.1,50,000/- and also, he is owning 2 acres of agricultural land and also, he is doing agricultural work. Further, it has been stated that the revision petitioner has got the job of Jail Warden and the first respondent is in need of money, for maintaining herself and her child. Therefore, the first respondent has come forward to file the petition and claiming maintenance for the respondent Nos.1 and 2.

2. The Family Court, Tirunelveli has passed Order in M.C.No.70 of 2014 (filed by the respondents), dated 30.03.2015 and it has been clearly observed, as follows:-

“...19 வயதான இளம் வயதான தாயும், அவருக்கு பிறந்து மூன்றே மாதமான குழந்தையும் ஜீவனாம்சம் கோரி 2006-ல் தாக்கல் செய்யப்பட்ட மனுவில் தலா ரூ.1,000- மட்டுமே கேட்கப்பட்டுள்ளது. ஆனால் கமார் பத்து வருடங்களுக்கு மேலான நிலையில், நாட்டில் அதிகரித்து வரும் விலைவாசி உயர்வு, கல்விச் செலவு, உடை உணவு அனைத்துக்குமான உயர்வுமற்றும் எதிர் மனுதாரரால் இவ் வழக்கில் ஏற்பட்டுள்ள காலதாமதம் ஆகியவற்றை கருத்திற்கொண்டும் 1, 2 மனுதாரர்களுக்கு தலா ரூ.5,000- அனுமதித்து உத்தரவிடப்படுகிறது.”

3. Being aggrieved the said order dated 30.03.2015 in M.C.No.70 of 2014, by the Family Court, Thirunelveli, the revision petitioner/husband has filed the present Criminal Revision Petition, and primarily contended that the impugned order of the Family Court is against law, weight of evidence and broad probabilities of the case.

4. Further, it is stated in the Grounds of Revision that the Trial Court has failed to consider that the marriage between the first respondent and the revision petitioner has been specifically denied by the revision petitioner and the first respondent has failed to prove the marriage and the Trial Court without considering the above mentioned vital aspect, has allowed the case and awarded the sum of Rupees Five Thousand as maintenance to each of the respondents herein, which is contrary to the provisions of law. The Trial Court has not given reasonable opportunity to the revision petitioner for conducting the case and passed order arbitrarily, without following procedural laws. The Trial Court has erred in awarding maintenance to the respondent Nos.1 and 2 at the rate of Rs.5,000/- per month to each of the respondents herein.

5. The pertinent point that arises for consideration in the present Criminal Revision Petition which has been filed as against the Order passed in M.C. No. 70 of 2014, is as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>

Whether the present Revision Petition has to be allowed for the reasons and grounds stated in the said Revision Petition and also



for the submissions made on behalf of the revision petitioner?

6. Analysis, discussions and findings with regard to the above mentioned point :-

This Court has considered the submissions of the learned counsel appearing for the both parties and also perused the impugned order passed by the trial Court. It is also seen from the records that the Trial Court has passed the impugned order, after giving adequate and sufficient opportunity to the revision petitioner/respondent, to put forth his submissions. In fact, the revision petitioner/respondent has cross examined P.W.1 to P.W.3 and also, examined on his side as R.W.1 and also, marked Ex.R.1 to Ex.R.3. This Court has given anxious consideration to the materials brought on record and also, the impugned order, passed by the Trial Court.

7. On a perusal of the material records, it is seen that the first respondent, namely, Malathy and the second respondent, namely, Minor Raja have filed the Maintenance Case, as against the husband of the first respondent, namely, the revision petitioner herein, on 13.02.2006. In such circumstances only, the Trial Court has rightly observed that the petitioners/respondents herein, are claiming Maintenance from the respondent/revision petitioner herein and the revision petitioner herein is denying the details of the marriage and also, about the birth of the second respondent.

8. Further, on a perusal of the impugned order passed by the Trial Court, it is found that the Maintenance case has been taken on file and the submissions on behalf of the petitioners/respondents herein have been heard by the Trial Court, on 04.09.2014 and thereafter, so many adjournments, namely, 12.09.2014, 10.10.2014, 12.11.2014, 30.12.2014 and 31.12.2014 have been given for making submissions of the respondent/revision petitioner herein and thereafter, the respondent/revision petitioner herein has been examined as R.W.1 and the Trial Court has also given final chance for examining the witnesses on the side of the respondent/revision petitioner herein.

9. Further, the Trial Court has examined 3 witnesses on the side of the petitioners/respondents herein, as P.W.1 to P.W.3 and 2 exhibits have been marked as Ex.P.1 and Ex.P.2 and also, one witness has been examined on the side of the respondent, as R.W.1 and 3 exhibits have been marked as Ex.R.1 to Ex.R.3.

10. Further, in the counter affidavit, the respondent/revision petitioner herein has stated that the respondent/revision petitioner herein is jobless. However, in his evidence, the respondent/revision petitioner has admitted that he is working as "காவலர்". Hence, it is crystal clear that the revision petitioner herein has not stated the true facts, details and particulars, to the Court and it is seen that the main aim of the revision petitioner herein, is to deny the payment of Maintenance amounts to the respondents herein.



11. Further, the respondent/revision petitioner herein has categorically denied the marriage between the revision petitioner herein and the first respondent herein and also, regarding the birth of the second respondent herein, namely, Minor Raja, after their marriage. Further, P.W.3 M/s.Kamalatchi Krishnamoorthy has deposed in her evidence that she has served as Deputy Director and Assistant Chemical Examiner to Government of D.N.A. Cell, Forensic Science Department, Mayilapur, Chennai-4 and she has examined D.N.A, regarding the paternity of the second respondent and she has issued Forensic Science Report(D.N.A. Report) as per Ex.P.1 and as per Ex.P.1, the said D.N.A. Report, it is clearly pointed out that the present revision petitioner herein is the biological father of the male child Raja(second respondent herein). Further, the revision petitioner herein has not disproved the said scientific finding, of the said P.W.3, with the help of D.N.A. Test Report, namely, Ex.P.1. On the other hand, it is found that the revision petitioner herein is making repeatedly, untenable grounds, with his only aim to avoid the payment of any Maintenance amounts to the respondents herein.

12. Further, the first respondent herein has clearly deposed in the original Maintenance Case petition itself, that the revision petitioner herein has married the first respondent and the marriage has been solemnized on 27.01.2005, between the revision petitioner herein and the first respondent and the second respondent also born to them on 19.10.2005 and at present the revision petitioner herein is working as Jail Warden. Further, the respondent/revision petitioner herein has also admitted that he is working as "காவலர்". In such circumstances also, it is found that the revision petitioner herein is having sufficient income to make payment of the Maintenance amounts, as ordered by the Trial Court. Further, the Trial Court has also considered the raise in the price of articles and the Government has also, granted 125% of Dearness Allowance, due to the price raise and the raise in educational expenses, food and clothing and the raise in essential commodities and also, in order to take care of the educational expenses of Minor Raja, namely, the second respondent herein, the Trial Court has rightly fixed Rs.5,000/- each, (Total amount Rs.10,000/-) as Maintenance to be paid by the revision petitioner herein, to the petitioners/respondents herein, within 10th day of every English calendar month, from the date of filing of the petition, as on 13.02.2006. Further, the first respondent herein has not pointed out any illegal procedure adopted by the Trial Court, before passing the said impugned order.

13. Further, the provisions of Section 397 of Cr.P.C., gives the High Court jurisdiction to consider the correctness, legality or propriety of finding, or order and as to the regularity of the proceedings of any inferior court. While considering the legality, propriety or the correctness of a finding or a conclusion, normally, the revising Court does not dwell at length upon the facts and evidence of the case. The Court in revision considers the materials only to satisfy itself about the correctness, legality and propriety of the findings, or



14. Further, this Court finds no illegality, impropriety or jurisdictional error in the impugned order under challenge. Further, the order impugned indicates the proper application of mind on the facts or the pleas raised before the Trial Court. The reasons, are clearly indicated in the impugned order, and also, it is true that it may depend upon the nature of the matter which is being dealt with by the Court. In an order of Maintenance matters, mere ritual of repeating the words or language used in the provisions, saying that illegality, impropriety or jurisdictional error is found in the order under challenge, does not meet the requirement of decision of a case, judicially. Further, it is seen that the Trial Court has passed impugned order in an appropriate way and also, in accordance with law. Further, the Trial Court has examined the material records for the purpose of satisfying itself about legality, propriety and correctness of the order passed in the present case.

15. On a careful scrutiny of the entire records, it is found that the Trial Court has passed impugned order, after taking into consideration all the relevant facts and circumstances in proper manner and the quantum of Maintenance awarded by the Trial Court cannot be said to be exorbitant, which does not warrant interference in this revision case and the Revision Petition is dismissed. Thus, the point is answered as against the revision petitioner herein.

16. ***In the result***, this Criminal Revision Case is dismissed, and the Order passed in M.C.No. 70 of 2014, dated 30.03.2015, on the file of the learned Judge, Family Court, Thirunelveli is confirmed. Consequently, connected Miscellaneous Petition No.1 of 2015 is also closed.

Sd/
Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar

To:
The Judge, Family Court,
Thirunelveli.

+1cc to M/S.S.P.Maharajan, Advocate in SR.No.24350
+1cc to M/S.G.Thalaimutharasu, Advocate in SR.No.23833

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