



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON: 04.01.2016

ORDERS DELIVERED ON: 12.01.2016

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CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Crl.R.C. (MD) .No.448 of 2015

and

M.P. (MD) No.1 of 2015

Thangavelu : Petitioner
Vs.
Kumutha : Respondent

Prayer: Criminal Revision Case is filed under Section 397 and 401 of Criminal Procedure Code, to call for the records relating to the order passed in M.C.No.79 of 2014 on the file of the Family Court, Tirunelveli, dated 21.07.2015 and quash the same.

For Petitioner : Mr.P.Senthurpandian
For Respondent : Mr.A.Nister Hakeem

ORDER

The Revision Petitioner/Husband has preferred the instant Criminal Revision Petition as against the order, dated 21.07.2015, in M.C.No.79 of 2014 passed by the Learned Family Court Judge, Tirunelveli.

2.The Learned Family Court Judge, Tirunelveli while passing the impugned order in M.C.No.79 of 2014 (filed by the Respondent/wife) on 21.07.2015, at paragraph No.12 had inter alia observed that "... as admitted by the Husband (Revision Petitioner) that the marriage is subsisting and further in view of the clear position that her Husband's pension is Rs.23,000/-, came to the conclusion that the Respondent/wife (Petitioner) could be awarded with a maintenance sum of Rs.7,500/- p.m. and resultantly, allowed the petition in part by directing the Revision Petitioner (Respondent in M.C.No.79 of 2014) to pay a sum of Rs.7,500/- p.m. toward maintenance to the Respondent/wife and the said maintenance amount was directed to be paid before 10th of every month, that too, from the date of filing of the petition viz., 26.11.2013 and also directed the payment of arrears till date within a period of two months from the date of passing of the order."

3.Challenging the correctness, validity and legality of the impugned order, dated 21.07.2015, in M.C.No.79 of 2014 passed by the Learned Family Court Judge, Tirunelveli, the Revision Petitioner/Husband has focused the present Criminal Revision Petition contending that the award of monthly maintenance of Rs.7,500/- to the Respondent/wife is against the evidence brought on record and hence, the same is against the evidence brought on record and hence, the same is

<https://hccasecourts.org.in/cases.html>

4.According to the Learned counsel for the Revision Petitioner,



the trial Court had failed to take into account that the Revision Petitioner/Husband had in fact provided 40 sovereigns of gold jewellery to the Respondent/wife and that the Respondent/wife's parents were very poor, had five daughters and the Revision Petitioner's marriage with the Respondent is a second marriage.

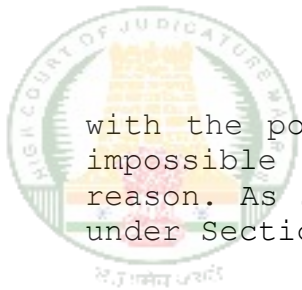
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5.The Learned counsel for the Revision Petitioner proceeds to take a stand that the trial Court had accepted the payment of Rs.5 lakhs to the Respondent/wife by the Revision Petitioner/Husband through Indian Overseas Bank and another payment of Rs.2 lakhs to her son viz., Sham Sundar marked as Ex.C1 (through bank Manager) which sum was obviously paid as maintenance to the Respondent/wife and this fact was not denied and after receipt of the said sum of Rs.5 lakhs by the Respondent /wife, there is no longer a legal obligation that exists for the Revision Petitioner/Husband to pay any further amount as maintenance. However, this facts were not taken into consideration while fixing the very liability upon the revision Petitioner/Husband to pay maintenance any further or in determining the quantum of maintenance awarded.

6.The Learned counsel for the Revision Petitioner takes a stand that the Revision Petitioner/Husband having paid a sum of Rs.5 lakhs to the Respondent/wife and a further sum of Rs.2 lakhs to the Respondents son Sham Sundar and the balance which was paid to redeem the gold jewellery, amounting in all a sum of Rs.9 lakhs (Rupees Nine Lakhs Only), the trial Court had not given credit to these amounts towards the maintenance and in fact, these payments of Rs.9 lakhs (Rupees Nine Lakhs Only) ought to have been adjusted towards the maintenance amount and the significant omission by the trial Court in this regard is an illegal one and also without jurisdiction under Section 125 of Cr.P.C. Yet another contention of the Learned counsel for the Revision Petitioner is that the trial Court had misread the evidence of the Revision Petitioner/Husband (R.W.1) by observing that he was not prepared to pay even a pie to the Respondent/wife by ignoring the context in which he made the statement viz., that he would prepare to pay the entire pension amount to the Respondent/wife provided she lived with him and in that case, she must discharge his debts and in this regard, the plea of the Petitioner is that he is right because of the reason with the entire amount was paid to the Respondent/wife, he would be left with nothing to pay the debt. However, these pivotal facts were lost sight off by the trial Court.

7.The Learned counsel for the Revision Petitioner submits that the Revision Petitioner had spent money for marriage expenses of his daughter (born though first wife) and also spending money on his ailments like heart decease, every day recurring expenses, making payment towards LIC premium of his son through Respondent/wife, paying the monthly instalments towards car loan of his son and also incurred expenses towards construction of upstairs of the house. Therefore, if these expenses are taken into account, there is no means available with the Petitioner to pay any maintenance under Section 125 of Cr.P.C. But these facts were not taken note of by the trial Court at the time of passing the impugned order.

<https://hcservices.ecourts.gov.in/hcservices/> 8.The Learned counsel for the Revision Petitioner contends that the Respondent/wife made a claim to his entire retirement benefits amount an to transfer his ancestral house in her name and lodged a complaint



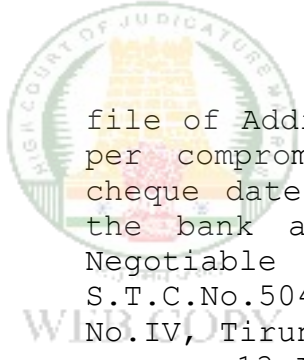
with the police and since the Revision Petitioner refused to accept the impossible demand, the Respondent/wife had deserted him without any reason. As such, the Respondent/wife is not entitled to claim maintenance under Section 125 of Cr.P.C.

9. It is represented on behalf of the Revision Petitioner that only after the Respondent/wife had agreed to live with the Petitioner, the earlier petition for maintenance filed by her in M.C.No.11 of 2011 was closed and in such a situation, it is contended that she is not entitled to claim maintenance. The Learned counsel for the Revision Petitioner submits that the Respondent/wife had made a promise in the police station to live with the Petitioner, but she violated her promise and later filed the petition seeking maintenance and therefore, she is not entitled to claim maintenance.

10. Per contra, it is the submission of the Learned counsel for the Respondent/wife that after marriage, the Revision Petitioner/Husband and herself lead a good matrimonial life for 32 years and subsequently, the Revision Petitioner/Husband often quarrelled with the Respondent/wife and left her separately and remained at his own village and at that point of time, the Revision Petitioner/Husband after serving as Station Master, retired from service.

11. The specific case of the Respondent/wife (Petitioner in M.C.No.79 of 2014) is that she is affected by Asthma and taking medical treatment continuously and in spite of several efforts taken by her to join with the Revision Petitioner/Husband, it proved futile and that the Revision Petitioner/Husband failed to maintain her. Also, it is represented on behalf of the Respondent/wife that she claimed maintenance in M.C.No.10 of 2011 on the file of the trial Court and when the said case enquiry was about to be completed, at that time, the Revision Petitioner/Husband had consented to take the Respondent/wife for leading a matrimonial life and accordingly, a joint memo was filed and the case was compromised. As per compromise agreement, the Revision Petitioner/Husband had agreed to give a sum of Rs.9 lakhs (Rupees Nine Lakhs Only) to the Respondent/wife towards past maintenance to redeem the jewels mortgaged with the bank and for meeting out her medical and other expenses. At the time of aforesaid pending case, the Revision Petitioner was serving as Southern Railway Station Master and received Rs.45,000/- as salary. At that point of time, since the Respondent/wife was affected with Asthma disease, for the said disease, the Revision Petitioner/Husband had admitted that he would spend upto Rs.15,000/- p.m. towards the said expenses and also he agreed to give Rs.1,000/- p.m. in respect of other expenses to her.

12. The Learned counsel for the Respondent/wife contends that the Revision Petitioner/Husband had purchased a house property to his first wife's sons and daughter and at the time of his retirement, he was to receive as retirement sum of Rs.30 lakhs. But since he had agreed and assured to pay a sum of Rs.9 lakhs (Rupees Nine Lakhs Only) to the Respondent/wife, he issued a post dated (10.07.2012) cheque bearing No.081515 of Indian Overseas Bank, Tirunelveli Junction for Rs.9 lakhs (Rupees Nine Lakhs Only) and a joint memo was filed and the case was compromised. Further, it is represented that contrary to the agreement, the Revision Petitioner/Husband had filed H.M.O.P.No.158 of 2012 on the



file of Additional Sub Court, Tirunelveli and when the Respondent/wife as per compromise agreement deposited the cheque for collection on the cheque date, the Revision Petitioner/Husband had issued stop payment to the bank and therefore, she filed a petition under Section 138 of Negotiable Instruments Act against the Revision Petitioner in S.T.C.No.504 of 2012 on the file of the Learned Judicial Magistrate No.IV, Tirunelveli and the same is pending.

13.It is represented on behalf of the Respondent/wife that the Revision Petitioner/Husband even after his retirement is receiving more than Rs.20,000/- and gets an income of Rs.5,000/- p.m. from other properties. In fact, the Respondent/wife has no immovable or movable properties and without income, she suffers from Asthma disease and lives separately in a rented house leaving the Revision Petitioner/Husband. Even for the rental house, she is not able to pay the rent and she is leading a difficult life. Therefore, in her M.C.No.79 of 2014 on the file of the trial Court, she had claimed a sum of Rs.10,000/- towards monthly maintenance from the Revision Petitioner/Husband, from the date of filing of the petition.

14.At this stage, this Court very relevantly points out that before the trial Court, the Respondent/wife as P.W.1 in M.C.No.79 of 2014 had deposed that she had left the Revision Petitioner/Husband's house one day prior to his retirement and further, that she had admitted that her Husband's first wife was Sundaraselvi, later one Susila and thirdly herself and when the Revision Petitioner/Husband filed the divorce petition, in which, an interim maintenance was ordered, at that time, she withdrew the same and in the said case, she had stated that she was living with her Husband.

15.The Learned counsel for the Revision Petitioner/Husband in his evidence as R.W.1 (in cross examination) had deposed that he got retired in the year 2012 as Railway Station Manager and at that time, his monthly income was Rs.45,000/- and that he received Rs.17 lakhs as retirement benefits and his present pension was Rs.23,000/- and out of the said sum of Rs.17 lakhs, he had paid a sum of Rs.9 lakhs (Rupees Nine Lakhs Only) to the Respondent/wife.

16.It is the evidence of the Revision Petitioner (Husband) as R.W.1 that the Respondent/wife in the year 2010, had filed a maintenance case and the same was ended in a compromise and only for that, he had issued a cheque for Rs.9 lakhs (Rupees Nine Lakhs Only) and that the said cheque was an invalid one and presently, the case was going on. Moreover, he had stated that the house rent of Rs.2,700/- p.m., his wife (Respondent) only pays the same and he had not paid the same.

17.The Learned counsel for the Revision Petitioner/Husband (as R.W.1) had deposed that it was correct that his wife (P.W.1) gave a police complaint before Palam Police Station to the effect that he had cheated her by not giving her 23 sovereigns jewels and based on the said complaint, he was also examined and in the police station, he had agreed to hand over 11 sovereigns of jewels, but not handed over the same. Further, he had stated that he had mortgaged 26 sovereigns of jewels at Tirunelveli Indian Overseas Bank for Rs.2,30,000/-.

18.The Learned counsel for the Revision Petitioner/Husband in his evidence as R.W.1 before the trial Court had stated that an agreement was ended into for the purpose of purchasing a house and for that, the jewels were pledged, but as spoken to, he was not able to purchase a house and further proceeded to state that his wife lived jointly with him. He had



also mentioned that he would hand over the entire pension amount. At the same time, he imposed a condition that she should bear all the loans and take care of her health herself. No wonder, after marriage, it is the primordial duty of a Husband to maintain his wife and children and he cannot avoid his responsibility in this regard, on any count.

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19. It is to be pointed out that maintenance to a wife is to be paid till the date of her re-marriage. In fact, she is entitled to claim 1/3 of income of her Husband towards her maintenance. As a matter of fact, it cannot be ignored that when her Husband treats a wife mutually, then, she is entitled to live separately. Even a consent decree settling of claims of wife, is not a bar to claim maintenance under the new Criminal Procedure Code, a per decision in **BAI TAHIRA v. ALI HUSSAIN FIDAALLI CHOTHIA AND ANOTHER** reported in **1979 (2) SCC 316**. It is to be noted that burden is on the Revision Petitioner/Husband to show that the Respondent/wife has sufficient means to maintain herself.

20. Be that as it may, on a careful consideration of respective contentions and in view of the fact that the Revision Petitioner/Husband is in receipt of pension of Rs.23,000/- p.m. and also this Court taking note of yet another important fact that in the earlier maintenance case, the Revision Petitioner/Husband had entered into compromise and closed the matter, but in the present M.C.No.79 of 2014, had taken a divergent stand that he wants to live jointly with the Respondent/wife and if he leads such a joint life, had agreed to pay maintenance to his wife. In short, when the Revision Petitioner/Husband receives a sum of Rs.23,000/- p.m. towards his pension, then, ordinarily there may not be any impediment for a Court of Law to direct him to pay 1/3 of pension amount as maintenance to the Respondent/wife, which comes to Rs.7,666/-. However, this Court taking note of the fact that he had already paid Rs.5 lakhs to the Respondent/wife and paid a further sum of Rs.2 lakhs to his son Sham Sundar and also this Court, taking note of the fact that the Revision Petitioner/Husband is suffering from heart ailment and to incur other expenses like making monthly instalment payment, in regard to the car loan, which he had obtained etc., deems fit and proper to direct the Revision Petitioner/Husband to pay a sum of Rs.5,000/- p.m. towards monthly maintenance to the Respondent/wife from the date of filing of the petition i.e. from 26.11.2013, to prevent an aberration of justice and in furtherance of substantial cause of justice. Further, the said maintenance sum of Rs.5,000/- p.m. is to be paid by the Revision Petitioner/Husband on or before 10th of every succeeding month and the arrears of maintenance amount (if not already paid) is directed to be paid within a period of two months from the date of receipt of a copy of this order.

21. In fine, the Criminal Revision Petition is partly allowed in above terms. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/True copy/



To
The Judge, Family Court, Tirunelveli.

+one cc to M/s.P.Senthur Pandian, Advocate in SR.No.2095
+one cc to M/s.A.Nister Hakeem, Advocate in SR.No.2172

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Pre-Delivery Order made in
Crl.R.C. (MD) .No.448 of 2015
12.01.2016