



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

CrI.R.C.(MD)No.486 of 2013

Nallathambi

...Petitioner

Vs.

1.Annai Mary

2.Minor. Preethabarathi

...Respondents

Prayer: This Criminal Revision Petitions is filed under Section 397 r/w. 401 Cr.P.C., praying to call for records and to set aside the order passed in M.C.No.63 of 2009 by the learned Chief Judicial Magistrate, Tiruchirappalli, dated 07.11.2012.

For Petitioner : Mr.R.Ramasamy

For respondents : Mr.D.Selvanayagam

O R D E R

The husband of the first respondent, who is the father of the second respondent challenges grant of monthly maintenance at the rate of Rs.2,000/- p.m. to them in M.C.No.63 of 2009 by the learned Chief Judicial Magistrate, Trichy.

2. The couples were blessed with two female children. Due to their difference of opinion, the spouses got separated. The elder daughter is with the revision petitioner, while younger daughter is with the first respondent, who is the second respondent in this revision.

3. It is contended by the learned counsel for the revision petitioner that the first respondent/wife has unreasonably withdrawn her society from her husband. So she is not entitled to get maintenance from her husband. Even, inspite of a decree for conjugal rights has been passed by the Sub Court, Mettur in H.M.O.P.No.2 of 2009, she did not come to live with him. Without any justification, she has simply deserted her husband. Such a woman cannot be paid maintenance under Section 125 Cr.P.C. Further, the revision petitioner is receiving less amount as salary. The maintenance ordered, imposed a heavy burden upon him.

4. On the other hand, the learned counsel for the respondents would submit that unable to bear and put up with the cruelty of the revision petitioner, the first respondent along with her second daughter went to her parent's house. What was granted by the Trial court is only a meagre amount. He is working as a Rural Welfare Officer. He is getting good salary.



5. I have considered the rival submissions, perused the impugned order and also the materials on record.

6. Filing of a restitution of conjugal rights petition under Section 9 of the Hindu Marriage Act and it being allowed are not answer to the claim of maintenance by the wife and children. Simply because in a HMOP, under Section 9 of the Hindu Marriage Act, if the wife remains exparte, we cannot come to conclusion that she is an erring woman. Sometimes, she may not have interest in seeing his face at all, in the matrimonial Court.

7. It is true that she did not join with him. However, when we read her evidence and the materials on record, it is seen that even the revision petitioner suspected her even when she talks to a woman. It is too dangerous to live with a suspicious husband. It will be a great mental strain and agony for a woman. In the circumstances, quarrel arose between both and she has come to her parent's house.

8. The revision petitioner is employed as a Rural Welfare Officer, in a Panchayat. It is a good post. He receives good salary, Now, this time, his DA would have got increased and he would have got annual increments also. So, his pay and paying capacity will be more.

9. The maintenance awarded namely, Rs.2,000/-p.m. each to the respondents in the present day is too small amount. It is a very meagre amount. There is no reason to reduce it.

10. In view of the forgoings, this Criminal Revision Petition fails and it is dismissed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar(CS)

To

The Chief Judicial Magistrate, Trichy.

+1cc to M/s.R.Ramasamy, Advocate in SR.33113

+1cc to M/s.D.Selvanaygam, Advocate in SR.33250

Crl.R.C. (MD) No.486 of 2013
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pjl

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