

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 03.04.2017
Judgment Pronounced On : 17.04.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No.1057 of 2014
and
M.P.No.1 of 2014

C.Lakshmanan ..Petitioner/Respondent
vs

1.Mrs.Indumathi
2.Minor L.Sivaram
rep. By mother and guardian
the first respondent herein. ..Respondent/Petitioner

Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, to call for the records of the lower Court and to set aside the order dated 20.07.2013 passed in M.C.No.528 of 2011 by the learned I Additional Judge, Family Court, Chennai and allowing the criminal revision case.

For Petitioner : Mr.S.Nambi Arooran

For Respondent : Mr.D.R.Arunkumar,
Legal Aid Counsel

O R D E R

The Criminal Revision Case has been filed against the order of granting maintenance to the respondents. The first respondent herein is the wife and the second respondent herein is the minor son of the petitioner. Earlier, the respondents filed a petition in M.C.No.528 of 2011 under Section 125 Cr.P.C. seeking maintenance before the Court below against the petitioner. The Court below allowed the said petition and directed the petitioner to pay a sum of Rs.4,000/- per month to the first respondent/wife and to pay a sum of Rs.2,000/- to the second respondent/son as maintenance, totalling a sum of Rs.6,000/- per month. Challenging the above said order, the present criminal revision case has been filed by the petitioner.

2. The brief facts leading to file the present revision case is as follows:-

According to the respondents, the marriage between the petitioner and the first respondent took place on 25.05.2008. Out of the said wedlock they blessed with a son, the second respondent herein. The petitioner was working as a constable in Central Industrial Security Force at Jarkhand. After the marriage they lived together for some time. Thereafter, the petitioner started quarrelling and demanded dowry from the first respondent family and. In the year, 2009 the petitioner driven out the first respondent along with his minor son from the matrimonial house and the first respondent took shelter in her parent's house and living there along with her son, since the first respondent maintain herself and the minor son and the petitioner herein is working as a Constable and drawing a salary of Rs.30,000/- per month having sufficient means and she sought for maintenance at the rate of Rs.5,000/- each to both the respondents. The petitioner herein contested the above application filing counter affidavit denying the allegation made by the respondents that he had treated the respondents cruelly, and it is only the first respondent has quarreled with the petitioner and left the matrimonial house on her own. In spite of several efforts taken by the petitioner for reunion, the first respondent and her family members ill-treated him and threatened him that not to come to the house of the first respondent. He further submit that he is not drawing a salary of Rs.30,000/- per month, but he only receiving a salary of Rs.14,000/- per month. He further contended that since the first respondent willfully or wantonly deserted the petitioner without any reason she is not entitled to get maintenance. He further submitted that pending the above maintenance case, he filed a petition in H.M.O.P.No.360 of 2011 for divorce on the file of the Sub Court, Tambaram on the ground of cruelty and desertion and exparte order of divorce was granted by the Civil Court by order dated 16.08.2012. In view of the decree passed by the Civil Court on the ground of desertion, the first respondent is not entitled for getting any maintenance from the petitioner. Considering the above materials, the Court below granted maintenance at the rate of Rs.4,000/- per month to the first respondent and Rs.2,000/- per month to the second respondent and totaling a sum of Rs.6,000/- per month. Challenging the above order, the present criminal revision case has been filed.

3. Even though notice was served on the respondents and the name of the respondents printed in the cause list, non appearance for the respondents. In the above circumstances, this Court appointed Mr.D.R.Arunkumar, the learned Legal Aid Counsel for the respondents.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

5. The learned counsel appearing for the petitioner would submit that in view of the decree passed by the Civil Court granting divorce on the ground of desertion, the first respondent is not entitled for maintenance and in view of the Bar under Section 125(4) Cr.P.C. as the first respondent has voluntarily left the matrimonial house and refusing to live with the petitioner. Apart from that the first respondent having sufficient means to maintain herself and she does not requires any maintenance from the petitioner and the maintenance amount granted by the Court below is very high as the petitioner is only getting a salary of Rs.18,000/- per month and his pay slip was also produced to establish the same.

6. Per contra, the learned counsel appearing for the respondents would contend that the decree passed by the Civil Court is only an exparte decree and this petitioner only driven out the first respondent from the matrimonial house, she along with her minor son have taken shelter in her parent's house. The learned counsel for the respondents further submitted that after the divorce, she has no obligation to live with the petitioner, and after the decree, the marriage between the petitioner and the first respondent do not subsist, but she continued to be the wife of the petitioner, as per Section 125 (1)(b) Cr.P.C. The petitioner has to pay the maintenance at least from the date of granting of decree. In support of his contention, the learned counsel appearing for the respondent relied upon a Judgment of the Hon'ble Supreme Court in ROHTASH SING Vs. SMT.RAMENDRI AND OTHERS reported in AIR 2000 SUPREME COURT 952 and another judgment in CHATURBHUI Vs. SITA BAI reported in 2008 (2) SCC 316 and also another Judgment of this Court in AJITHKUMAR Vs. SIMMI AND ANOTHER reported in 2017 (1) MWN (Cr.) 407.

7. I have considered the rival submissions.

8. Section 125(1) Cr.P.C. provides that if a person having sufficient means neglects or refuses to maintain his wife who unable to maintain herself, or his legitimate or illegitimate minor child, whether married or unmarried, who unable to maintain themselves, or his legitimate or illegitimate child even though attain majority, where such child is, by reason of any physical or mental upnormality or injury unable to maintain herself, or his father or mother, who are unable to maintain himself or herself on proof of such neglect or refusal liable to

pay maintenance. The object of the maintenance proceedings is compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. Under the law the burden is placed in the first place upon the claimants to prove that a person from whom claiming maintenance having sufficient means and claimants are unable to maintain themselves.

9. In the instant case, the petitioner who is the husband of the first respondent, and father of second respondent, now working as Constable in Central Industrial Security Force, he has sufficient means. Even as per the salary slip also submitted by the petitioner, he is drawing a salary of Rs.18,000/- per month and it is also proved by the respondents that they are living in the parental house of the first respondent and they are unable to maintain themselves. In the above circumstances, the petitioner has a legal obligation to pay the maintenance to the respondents.

10. So far as the contention of the learned counsel appearing for the petitioner regarding the divorce proceedings wherein, a competent civil Court granted decree for divorce on the ground of cruelty and desertion. The above said decree of the civil Court is also marked as Ex.R4. A perusal of the decree shows that it is an exparte decree and the above divorce petition filed on the ground of cruelty and desertion and the decree was passed on 16.08.2012. As rightly contended by the learned counsel appearing for the petitioner that there is a Bar under Section 125(4) Cr.P.C., that the wife who refused to live with her husband without any sufficient reasons is not entitled for maintenance. But the above bar is clearly supposes subsistence of marital relationship between the parties, if the marriage is in subsistence, the wife has a legal obligation to live with her husband and when she refused to live with her husband, when the marriage is in subsistence, the bar under Section 125(4) Cr.P.C. will coming into force preventing the wife from seeking maintenance. But, in the instant case, the decree for divorce was passed as early as 16.08.2012, and thereafter the first respondent is a divorced women, the marriage between the petitioner and first respondent do not subsists from the date of above decree, the first respondent has no legal obligation to live with the petitioner.

11. Even though the marital relationship has come to an end, by virtue of the provision under Section 125(1)(b) Cr.P.C. the first respondent continued to enjoy the status of wife of the petitioner for the purpose of claiming maintenance. In the above circumstances, the first respondent who continued to be the wife of the petitioner and unable to maintain herself, and remains unmarried, and the petitioner has a statutory obligation to

provide maintenance to her. The Hon'ble Supreme Court in a Judgment reported in AIR 2000 SUPREME COURT 952(supra) has held as follows:-

10. Learned counsel for the petitioner then submitted that once a decree for divorce was passed against the respondent and marital relations between the petitioner and the respondent came to an end, the mutual rights, duties and obligations should also come to an end. He pleaded that in this situation, the obligation of the petitioner to maintain a woman with whom all relations came to an end should also be treated to have come to an end. This plea, as we have already indicated above, cannot be accepted as a woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was, once, her husband continues to be under a statutory duty and obligation to provide maintenance to her.

11. Learned counsel for the petitioner then contended that the Maintenance has been allowed to the respondent from the date of the application. The application under Section 125 Cr.P.C. was filed by the respondent during the pendency of the civil suit for divorce under Section 13 of the Hindu Marriage Act. It is contended that since the decree of divorce was passed on the ground of desertion by respondent, she would not be entitled to Maintenance for any period prior to the passing of the decree under Section 13 of the Hindu Marriage Act. To that extent, learned counsel appears to be correct. But for that short period, we would not be inclined to interfere.

12. Recently, Three - Judges Bench of the Hon'ble Supreme Court approved the above Judgment in MANOJ KUMAR Vs. CHAMBPA DEVI in Special Leave to Appeal (Crl) No.10137 of 2015 dated 06.04.2017, held as follows:-

"Having perused the impugned order, we are satisfied, that the same is based on the two decisions rendered by this Court, firstly, Vanamala(smt) vs. H.M.Ranganatha Bhatta (smt), (1955) 5 SCC 299, and secondly, Rohtash Singh Vs. Ramendri (Smt) and others 2000 (3) SCC 952. Section 125 of the Criminal Procedure Code, including the explanation under sub-section (1) thereof, has been consistently interpreted by this Court, for the last two decades. The aforesaid consistent view has been followed by the High Court while passing the impugned order."

and dismissed the SLP.

13. In the above circumstances, the petitioner cannot deny the maintenance to the first respondent on the ground that there is a civil court decree for divorce on the ground of desertion and I find no merit in the criminal revision case and the same is liable to be dismissed. However, since there is a decree for divorce from 16.08.2012, the petitioner is only liable to pay maintenance to the first respondent from the date of decree for divorce, namely, 16.08.2012 and the petitioner is liable to pay maintenance to the second respondent as per the order passed by the Court below.

14. In the result, the Criminal Revision Case is dismissed and the petitioner is directed to pay the past maintenance to the first respondent from 16.08.2012. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To
The Learned I Additional Family Judge,
Family Court, Chennai.

+ 1 cc to M/s. N.Nambi Arooran, Advocate SR.22889
+ 1 cc to M/s. D.R. Arunkumar, Advocate SR.23126

Cr1.R.C.No.1057 of 2014

VSN(CO)
EU 25.4.2017