

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal R.C. No.79 of 2014
and MP No.1 of 2014

S.Harikrishnan
S/o.Sapapathy,
Electrical Supervisor Grade -I,
Electrical Department,
Sri Ramachandra Medical Centre,
Sri Ramachandran University,
Porur, Chennai 600 116.

... Petitioner

Versus

1. N.Lakshmi
2. Vishal (Minor)
3. Mythreyan (Minor)
Minors Rep. By Mother and natural 1st Respondent

... Respondents

PRAYER: Criminal Revision filed under Section 397 read with Section 401 of Criminal Procedure Code to set aside the order dated 30.09.2013 in M.C.No.60 of 2010 on the file of Chief Judicial Magistrate, Vellore.

For Petitioner : Mr.S.Gunaseelan
For Respondents : Mr.N.P.Abhirami
Legal Aid Counsel

ORDER

This Criminal Revision has been filed against the order passed by the Chief Judicial Magistrate, Vellore in M.C.No.60 of 2010 on 30.09.2013, challenging the order of maintenance to the respondents.

2. The first respondent herein is the wife of the petitioner and the respondents 2 and 3 are the minor children born to them. Earlier the first respondents filed a petition under Section 125 (1) Cr.P.C. seeking maintenance at the rate of Rs.3,000/- to 1st respondent, Rs.2,250/- to the 2nd respondent and Rs.2,000/- to the 3rd respondent. The Court below allowed the application and granted the maintenance as prayed for. Challenging the same, the present revision has been filed.

3. The case of the respondents is as follows:

The marriage between the petitioner and the first respondent took place on 12.12.2005. At the time of marriage sufficient dowry was given to the petitioner by the parents of the first respondent. Out the wedlock between the petitioner and the first respondent, the respondents 2 and 3 herein have born. Thereafter there was a misunderstanding between the petitioner and the 1st respondent. According to the first respondent, the petitioner is addicted to alcoholic drinks and he is also having

illicit intimacy with another lady. When it was questioned by the first respondent, there were frequent quarrel between the spouses and ultimately, the first respondent was driven out of the matrimonial home with a demand to bring more dowry from her parents. It is also alleged that the petitioner assaulted the 1st respondent mercilessly. As the petitioner willfully neglected the respondents and refused to maintain them, the 1st respondent was constrained to file the petition under Section 125 of Criminal Procedure Code claiming maintenance for herself and the minor children. According to the respondent, the petitioner is employed as Electrical Supervisor Grade-I, in Electrical Department of Sri Ramachandra Medical Centre at Porur, Chennai, and drawing salary of Rs.25,000/- per month, hence, the petitioner is resourceful enough to maintain the respondents.

4. The above application was contested by the petitioner, contending that the allegations made in the petition are false and the petitioner is always ready and willing to live with the first respondent. At the time of marriage, even though dowry was given by the parents of the 1st respondent, it was subsequently taken back by the 1st respondent. It is further stated that the first respondent has already filed a petition for divorce in HMOP No.290 of 2010 on the file of the Sub Court, Vellore and the divorce was also granted. It is further stated that the petitioner is not getting a

salary of Rs.25,000/- as alleged but he is getting a salary of Rs.16,000/- only. Since the first respondent/wife is living separately and left the matrimonial company of the petitioner on her own without any reason, she is not entitled for maintenance.

5. Considering the above facts and circumstances of the case, the Court below allowed the application and directed the petitioner to pay a sum of Rs.3,000/- to the 1st respondent, Rs.2,250/- to the 2nd respondent and Rs.2,000/- to the 3rd respondent for their maintenance. Challenging the same, the present revision has been filed by the petitioner.

6. Even though notice was served to the respondents, none appeared on their behalf and therefore, as per the directions of this Court, Ms.N.P.Abhirami, learned counsel was appointed on behalf of the respondents as a legal aid counsel.

7. Heard Mr.S.Gunaseelan, learned counsel appearing on behalf of the petitioner, Ms.N.P.Abhirami, learned counsel appearing on behalf of the respondents.

8. The marriage between the petitioner and the first respondent was solemnised on 12.12.2005 and it is not disputed. Even though the 1st respondent

obtained decree of divorce on the ground of cruelty, by virtue to the proviso to under Section 125 (1) (b) of Cr.P.C, the first respondent continued to be the wife of the petitioner for the purpose of claiming maintenance especially when she is not re-married after obtaining divorce. It is also not in dispute that the respondents 2 and 3 are children born out of the wedlock between the petitioner and the first respondent. Hence the petitioner is under legal obligation to maintain the first respondent, being the wife and the respondents 2 and 3, who are the children born to him. It is the case of the 1st respondent that she is living alone along with two children she could not maintain the herself and the children. It is further stated that the children are studying in the school and she is not resourceful enough to even pay the school fees to the children.

9. As regards the wherewithal of the petitioner to maintain the respondents, it is admitted that the petitioner is employed as Electrical Supervisor Grade-I, in Electrical Department of Sri Ramachandra Medical Centre at Porur, Chennai, even according to him. He is drawing salary of Rs.16,000/- per month and hence enough means to provide maintenance to the respondents. Having regard to the above, I am of the view that the amount awarded by the trial court towards maintenance to the respondents cannot be said to be onerous.

V.BHARATHIDASAN.J.,

jv

10. In the result, the Criminal Revision is dismissed. Consequently, connected miscellaneous petition is also closed.

11. While parting with the case, I appreciate the services rendered by Ms.N.P.Abhirami, Legal Aid Counsel, who appeared on behalf of the respondents. The Legal Service Authority attached to this Court is directed to pay her remuneration.

11.04.2017

Index : Yes/No

Internet : Yes/No

jv

To

1. The Chief Judicial Magistrate,
Vellore.
2. The Member Secretary,
Tamil Nadu State Legal Service Authority
High Court Building
Chennai 600 104.

Criminal R.C. No.79 of 2014