

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.08.2017

Pronounced on : 22.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1034 of 2011

M.Nazira Fathima Banu ... Petitioner

.. Vs ..

H.Nazeem ...Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C., to set aside the order dated 3.1.2011 in partly allowing the Maintenance Petition passed by the learned III Additional Family Court, Chennai in M.C.No.493 of 2008.

For Petitioner : Mr.MD.Ashf Aq Rafi

For Respondent : No appearance

ORDER

The accused has preferred this Criminal Revision Case under Section 397 r/w. 401 of Cr.P.C., to set aside the order in M.C.No.493 of 2008, dated 3.1.2011 in partly allowing the Maintenance Petition passed by the learned III Additional Family Court, Chennai .

2. The case of the petitioner is that:-

(i) The petitioner is a divorcee having two children through her first marriage. The respondent is second husband. After the marriage till September 2004, both of them were lived in the petitioner's parental home. But the respondent started his ill treatment to the petitioner and her parents which forced. After the petitioner to part with Rs.10,000/- for the day to day expenditure of the respondent. Then petitioner and respondent were in a separate house by paying monthly rent of Rs.8,000/-. This arrangement was done by the petitioner's father. They were in that separate home till January 2007. Petitioner's father financially gave support to the petitioner and respondent to run the family. Subsequently, the respondent demanded more jewels, money and 4 wheeler. But the same time, the respondent never discharged his duties towards the petitioner. He started to ill treat the petitioner and her family members. Now she depend with her father and she is not able to maintain herself. She has no means to run her livelihood. The respondent is a Manager in Private Company and earning Rs.20,000/- per month. So she needs R.7000/- as maintenance for her livelihood and filed this Criminal Revision Petition.

3. The respondent-husband in his counter before the Family Court has stated that the petitioner is a divorcee and she got married with the

respondent. She had two children through her first husband. But he denied that the respondent is working as a Manager in a Private Company and earning Rs.20/- per month. The petitioner frequently visited the working spot of the respondent and irritated the respondent therein which created the problem for the respondent and he was sent out from the job. The petitioner alone wilfully deserted the respondent. She was not able to maintain the family with the income of the respondent. So she left the respondent and gave a police complaint before the Commissioner of Police, Chennai in which Rs.2,16,000/- were given as full and final settlement. Apart from it she is receiving Rs.40,000/- as rent from the house properties.

4. The petitioner was examined as P.W.1 and petitioner's sister was examined as PW2 and Exhibits P1 to P7 were marked. No oral evidence was adduced on the side of the respondent.

5. It is admitted by both parties petitioner and respondent are husband and wife and their marriage had taken place on 28.03.2004 and they were live together till 2007. No child was born between the petitioner and the respondent. The case of the petitioner that respondent deserted the petitioner and she filed this petition for maintenance claiming Rs.7000/- per month from the respondent since he is working as a Manager in a private company and getting Rs.20,000/- per month as salary.

6. Considering the social and economic status of the petitioner, the respondent is directed to pay a sum of Rs.2000/- as maintenance to the petitioner from the date of this petition.

7. The point for determination is that :-

i) Whether the award of maintenance is low?

8. Though the respondent was served, he has not entered appearance, hence, his name was printed. None appearance for the respondent.

9. To substantiate the averments stated in the petitioner, the petitioner was examined as PW1 and her sister was examined as P.W.2. Both of them in their chief examination would say that the respondent failed to perform his duties as husband of the petitioner and deserted her. So, she is in need of maintenance for her livelihood. In the cross-examination the respondent has got sufficient means to lead her life. Apart from it, the marriage invitation, Marriage Certificate, Marriage Photo, notice and the reply notice given before filing this petition were marked as Exs.P1 to P5 without any objection of the respondent. Exs.P6 and P7 are the memorandum of understanding executed between the petitioner and the respondent on different dates and the

contents of the said documents were admitted by the respondent. To contravert the evidence of the petitioner, the respondent has not adduced any oral and documentary evidence. It is a known fact that the petitioner and the respondent are husband and wife and now they are living separately. They have not filed any documentary proof to show his income. In the same way, in the counter it has been stated that petitioner has got sufficient means to maintain herself by getting Rs.40,000/- as income from the house property. But he has not filed any proof to substantiate this fact. However, the respondent is the husband of the petitioner has to maintain his wife for which he has to pay some amount to meet her day to day expenditure.

10. After perusing the Exs.P1 to P7 and the evidence of the P.W.1, the petitioner-wife and independent witness P.W.2, this Court is of the considered view that though no documentary evidence has been filed before the trial Court. It is a categorical evidence of the petitioner-wife that the respondent-husband is employed and getting salary of Rs.20,000/- and petitioner being the wife is entitled to live a dignified life with her husband.

11. After perusing Exs.P6 and P7, a memorandum of understanding that is to have been entered between the petitioner-wife and the respondent-husband, it is seen that it only relates to not pressing the complaint given by the petitioner herein under the Special Cell for Dowry Complaint and is

nothing to do the claim petition herein.

12. Considering the entirety of the circumstances and also taking note of the nature and the nature of employment of the respondent-husband, the maintenance amount is enhanced to Rs.3000/- and with the above modification, this Criminal Revision Petition is allowed to the limited extent as indicated above.

13. In the result, this Criminal Revision Petition is allowed and judgment passed in III Additional Family Court, Chennai in M.C.No.493 of 2008, dated 03.01.2011 is stand modified.

22.11.2017

Index : Yes/No

Internet : Yes/No

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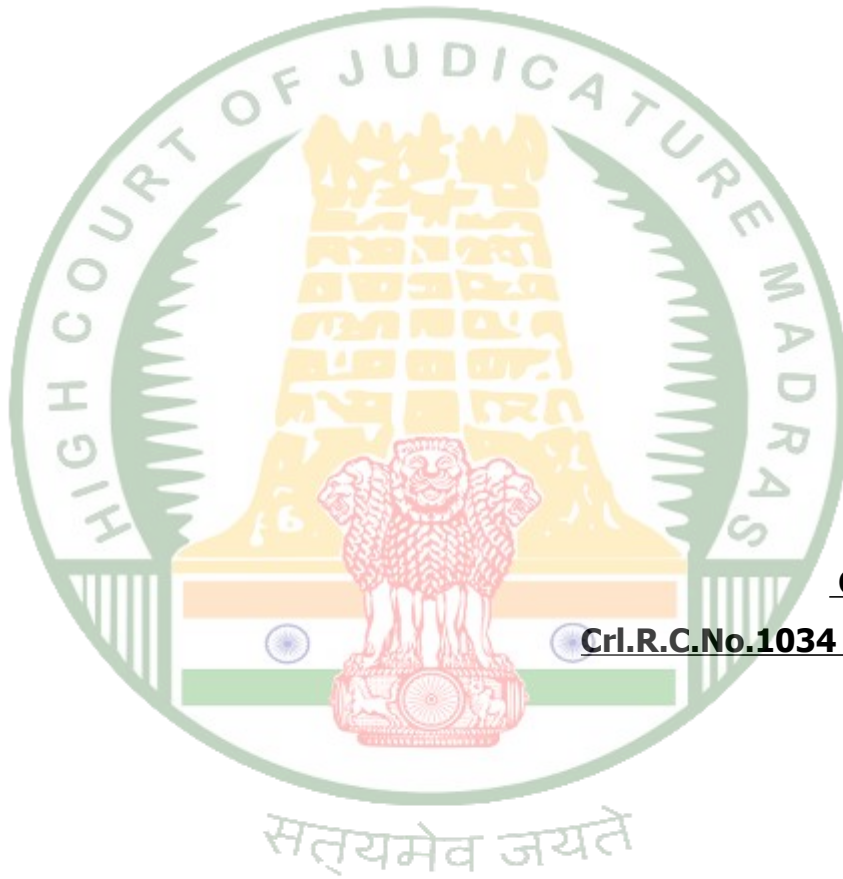
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To

1. The III Additional Family Court, Chennai
2. The Public Prosecutor, High Court of Madras.

RMT.TEEKAA RAMAN, J.

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Order in

Crl.R.C.No.1034 of 2011

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