

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.25980 of 2008

1.Velumani
2.Minor Suguna

... Petitioners

vs.

Kalisamy

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the Judgment dated 16.05.2008 made in Crl.R.C.No.9 of 2008 on the file of the Additional Sessions Court (Fast Track Court No.2) Gobichettipalayam, confirming the order dated 02.11.2007 made in M.C.No.1 of 2005 on the file of the Judicial Magistrate, Sathiyamangalam by awarding maintenance to the 1st petitioner and revise the quantum of maintenance awarded to the 2nd petitioner by granting maintenance as prayed for and allow the above Crl.O.P.

For Petitioners: Mr.Narayanasamy

For Respondent : Mr.K.V.Shanmuganathan

JUDGMENT

The petitioners have filed this criminal original petition to set aside the Judgment dated 16.05.2008 made in Crl.R.C.No.9 of 2008 on the file of the Additional Sessions Court (Fast Track Court No.2) Gobichettipalayam confirming the order dated 02.11.2007 made in M.C.No.1 of 2005 on the file of Judicial Magistrate, Sathiyamangalam by awarding maintenance to the 1st petitioner and revise the quantum of maintenance awarded to the 2nd petitioner by granting maintenance as prayed for and allow the above Criminal Original Petition.

2.The petitioners challenging the rejection of maintenance by the courts below have come forward with the instant criminal original petition. It is the case of the petitioners that the marriage between the 1st petitioner and the respondent herein was solemnized on 23.02.1994. The respondent worked as Conductor in Tamil Nadu State Transport Corporation at the time of marriage and he is still in service. One of their wedlock they had a female child born on

16.11.1994. Their life went happy for some time and soon after there was a misunderstanding between them and therefore the petitioners and respondent lived separately.

3.The 1st petitioner was expelled by the respondent and driven out to her paternal house out of the above matrimonial dispute. In spite of several negotiations between the family of 1st petitioner and respondent, no compromise arrived and the petitioners were not taken back to her matrimonial house by the respondent.

4.In the meantime, during the subsistence of marriage with 1st petitioner, the respondent married one Jegatheeswari and is having a female child through her. The 1st petitioner was not in a position to maintain her and further suffered a lot to maintain the minor children. Therefore to meet out the living expenses of the petitioners and for education expense of 2nd petitioner, 1st petitioner required a sum of Rs.4,250/- per month. Therefore the petitioners filed an application U/s 125 of CrPC in M.C.No.1 of 2005 on the file of Judicial Magistrate, Sathiyamangalam, claiming a sum of Rs.2,500/- for her and Rs.1,750/- to the 2nd petitioner as monthly maintenance.

5.It is the further case of the petitioners that the respondent is duty bound to maintain them and the respondent being a TNSCTC employee, besides earning Rs.15,000/- per annum from agricultural source is financially sound and capable of maintaining the petitioners by having sufficient means of income. Therefore the respondent is liable to pay a sum of Rs.4,250/- towards monthly maintenance to the petitioners.

6.I have heard the arguments of Mr.Narayanasamy, learned counsel for the petitioners and Mr.K.V.Shanmuganathan, learned counsel for the respondent and also perused the entire materials available on the record.

7.The prime contention of the petitioners is that she was deserted by the respondent and was thrown out of her matrimonial home along with minor daughter and hence the 1st petitioner left hapless is living at her parental home. The 1st petitioner is not in a position to maintain her and the minor child; hence they filed an application under section 125 of CrPC seeking maintenance of Rs.4,250/- per month.

8.Per contra, the learned counsel for the respondent contends that the 1st petitioner left the matrimonial home on her own volition and wherefore she is not entitled for any maintenance from the respondent. Further the respondent is ready to maintain and educate the minor child, the 2nd petitioner herein.

9.The impugned order disclose that the learned Magistrate rejected the claim of the 1st petitioner by holding that the 1st petitioner having left the house of the respondent at her own will is disentitled for maintenance. In my opinion the said finding of the Learned Magistrate is not legally sustained. In this context it is to be noted that Section 125 Cr.P.C. provides maintenance for wife and as well as other Dependants.

10.The word "wife" has been defined in explanation (b) of Section 125(1) of Cr.P.C. as follows:

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

11.Hence there can be no doubt that 125 Cr.P.C. enumerates that an order of maintenance is a measure of social justice and has to be passed in cases where any person despite of having sufficient means of income neglects or refuses to maintain his wife, who is unable to maintain herself. This being the position of law, it is the obligation of the husband to maintain his wife. A husband cannot be permitted to take a plea of desertion by wife to disown his statutory duty and further the husband is disallowed from contending that he is financially unsound to maintain his wife. From the above said enunciation of Law the obligation on the husband to maintain his wife is indispensable and the same is on a higher pedestal.

12.In view of the above legal preposition the finding rendered by the Courts below is liable to be set aside as the same suffers legal imbalance. Therefore, I am of the considered opinion that the 1st petitioner is entitled to get maintenance of Rs.2,500/- month as prayed for in the present cost of living and the same is to be paid by the respondent herein from the date of petition. In so far as the claim of the 2nd petitioner is concerned, this Court having found that she has attained majority (and now married, the factum of marriage has to be ascertained), by giving liberty to file a fresh petition, her claim for maintenance stands rejected.

13.In so far as the claim of the 2nd petitioner is concerned, this Court having found that she has attained majority hold that she is not entitled for the relief sought, accordingly her plea for maintenance stands rejected.

14.In the result:

(a) this Criminal Original Petition is partly allowed and the order dated 16.05.2008 made in CrI.R.C.No.9 of 2008 on the file of the Additional Sessions Court (Fast Track Court No.2), Gobichettipalayam, confirming the order dated 02.11.2007 made in M.C.No.1 of 2005 on the file of the learned Judicial Magistrate, Sathiyamangalam, are hereby set aside in so far as the 1st petitioner is concerned;

(b) the 2nd petitioner is not entitled to get any maintenance from the respondent as she attained majority;

(c) the respondent is directed to pay a sum of Rs.2,500/- to the 1st petitioner from the date of petition filed under Section 125 Cr.P.C. Considering the facts of the case there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Additional Sessions Court
(Fast Track Court No.2),
Gobichettipalayam.

2.The Judicial Magistrate,
Sathiyamangalam.

+ 1 cc to Mr.Narayanasamy, Advocate Sr.45144

CrI.O.P.No.25980 of 2008

(CS-IX)
EU(19/03/2018)