



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)Nos.497 & 529 of 2015

[Orders Reserved on 07.02.2017]

Cr1.RC(MD)No.497 of 2015

T.Hari : Petitioner / Respondent

Vs.

Sugunya : Respondent / Petitioner

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records pertaining to the order passed by the learned Family Court Judge, Madurai, in M.C.No.82 of 2013, dated 04.08.2015, examine them and set aside the order.

Cr1.RC(MD)No.529 of 2015

R.Suganya : Revision Petitioner / Wife

Vs.

T.Hari : Respondent / Husband

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to allow the Revision Petition and enhance maintenance amount awarded from the date of application of M.C.No.82 of 2013 on the file of Family Court, Madurai pronounced order dated 04.08.2015 and to call for the records pertaining to the case in M.C.No.82 of 2013 on the file of family Court, Madurai, to scrutinize the legality, propriety and correctness of proceedings and order passed as well dated 04.08.2015.

For Petitioner in : Ms.D.Geetha

Cr1.RC.497/2015

and for Respondent

In Cr1.RC.529/2015.



For Respondent in
Crl.RC.497/2015 &
for Petitioner in
Crl.RC.529/2015.

: Ms.R.Suganya
(Party-in-person)

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COMMON ORDER

The Criminal Revision in Crl.R.C(MD)No.497 of 2015 has been filed praying to set aside the order passed by the learned Judge, Family Court, Madurai, in M.C.No.82 of 2013, dated 04.08.2015 and Criminal Revision in Crl.R.C(MD)No.529 of 2015 has been filed praying to enhance the maintenance amount awarded from the date of application of M.C.No.82 of 2013, on the file of Family Court, Madurai, dated 04.08.2015.

2. Both the Criminal Revisions Cases ie., Crl.RC(MD)No.497 of 2015 and Crl.R.C(MD)No.529 of 2015 are taken up together for final disposal, since they are being interlinked.

3. The sum and substance of the submissions of the Ms.D.Geetha, the learned counsel appearing for the petitioner-husband in Crl.R.C(MD)No.497 of 2015 is that the petitioner-husband married to the respondent-wife on 05.03.2012 at Madurai, according to Hindu rites and customs and started their matrimonial life at Chennai. The respondent-wife always suspicious about the character and conduct and tortured the petitioner-husband, along with her family members and caused mental cruelty. Due to interference of the family members of the respondent-wife, the respondent-wife left the matrimonial home, on her own volition, on 22.04.2013, when the Petitioner-Husband was away from home, at Bangalore. Therefore, the Petitioner-husband forced to prefer an application for divorce against the respondent-wife, before the learned Sub-Judge, Tambaram. The respondent had also preferred criminal cases and also a Petition for Maintenance against the petitioner-husband. The Divorce case was transferred to the file of Family Court, Madurai, as per the orders of this Court. The Family Court, Madurai, vide order dated 04.08.2015, though came to the conclusion that the respondent-wife left the matrimonial home on her own, awarded a sum of Rs.5000/- per month, as maintenance, in M.C.No.82 of 2013.

4. The learned counsel appearing for the petitioner-husband would submit that, as per Section 125(4) of Cr.P.C., no wife shall be entitled to receive an allowance from her husband, if, without any sufficient reason, she refused to live with her husband. He drew the attention of this Court to Section 125(4) of Cr.P.C, which reads as follows:-

"(4) No Wife shall be entitled to receive an allowance from her husband under this section, if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent. "

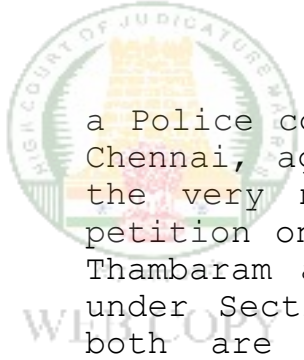


5. The learned counsel appearing for petitioner-husband, in support of his contention, invited the attention of this Court to the Judgment of the Hon'ble Supreme Court in *Deb Narayan Halder Vs. Anushree Halder* reported in [2003 CrI.L.J.4470] ; the Judgment of this Court in *R.Vinayagam and Another Vs. M.Prema and Others* reported in [2013(3) MLJ (CrI) 690] ; the Judgment of the Bombay High Court in *Sow.Sumanbai Ramesh Garje & Another Vs. Ramesh Dagadu Garje* reported in [1 (2015 DMC 358] and the Judgment of Telangana and Andhra Pradesh High Court in *S.Rehana Sulthana @ Rehana Begum Vs. Mohammad Ghouse and Another* reported in [III (2016) DMC 412].

6. Ms.Suganya-wife, the Party-in-person, would submit that the marriage between them held on 05.03.2012 in Madurai. After the marriage, the party-in-person / wife was living in Chennai with her husband. Due to interference of husband's family members, he forced to file divorce petition on 18.04.2013, before the Sub-Court, Tambaram, Chennai, without the knowledge of wife. After that, the wife filed restitution of conjugal rights before the Family Court, Madurai on 26.06.2013 and also filed an application in M.C.No.82 of 2013 for claiming Rs.25,000/- per month, as maintenance, but the Court awarded a meagre amount of Rs.5000/- per month, on 04.08.2015. Challenging the order of maintenance, she preferred a Revision in CrI.R.C(MD)No.529 of 2015, for enhancement of maintenance. As a legally wedded wife, the husband is bound to maintain the wife by doing matrimonial obligations and though he has sufficient means, he neglects and refuses to maintain his wife. Wife has no means to maintain herself, to cover expenses for roof, food cloth and other necessities of life. She also submitted that the alleged allegation of cruelty against her husband is a false one and prayed for dismissal of CrI.RC(MD)No.497 of 2015 by allowing CrI.R.C(MD)No.529 of 2015.

7. I have heard Ms.D.Geetha, the learned counsel appearing for the petitioner in CrI.RC(MD)No.497 of 2015 and the respondent CrI.R.C(MD)No.529 of 2015 and I have heard Ms.Suganya-wife, the Party-in-person, for petitioner in CrI.R.C(MD)No.529 of 2015 and for Respondent in CrI.RC(MD)No.497 of 2015. I have also perused the materials available on record.

8. Both the parties were living together in the matrimonial home till 05.03.2013 at Chitlapakkam, Chennai, after their marriage. It is also admitted that the mother of the Revision Petitioner / husband was admitted in a Hospital for treatment due to cancer on 01.03.2013. It is also admitted that problem arose between the Revision petitioner / husband and the respondent / wife from 06.03.2013 onwards and the Revision petitioner / husband has given a Police complaint on 06.03.2013 against the respondent / wife and her family members before the All Women Police Station, Madipakkam. Both parties were called by the said Police Station and were advised to lead a peaceful matrimonial life after getting statements from both the parties. Again the Revision Petitioner / husband has given



a Police complaint on 17.04.2013 before the Police Commissioner at Chennai, against the respondent / wife and her family members. On the very next day, the revision petitioner has filed a divorce petition on 18.04.2013 in HMOP No.204 of 2013 before the Sub Court, Tambaram against the respondent / wife on the grounds of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955. While both are living in the same roof ie., matrimonial house at Chitlapakkam, the said case was transferred to the Family Court, Madurai and taken on file as HMOP No.516 of 2014 and is pending, as per the order of this Court in Tr.C.M.P.No.29 of 2014, dated 30.06.2014.

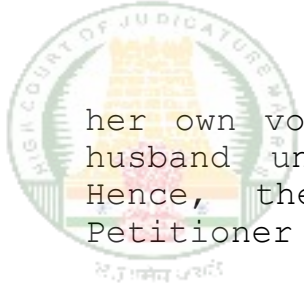
9. The respondent / wife has also entered appearance through her counsel in the divorce proceedings, while the case was pending before the Sub-Court, Tambaram. Thereafter, the respondent filed HMOP No.369 of 2013 on 26.06.2013, before the Family Court, seeking the relief of restitution of conjugal rights against the revision petitioner / husband and is pending. The said HMOP No.204 of 2013 was taken on file by the Sub Court, Tambaram on 29.04.2013 and Notice was sent to the same address where both parties were living at Chitlappakkam, Chennai, but the said notice was returned stating that no such person in the address.

10. Admittedly, the respondent / wife left the matrimonial Home on 20.04.2013. The counsel for the revision petitioner / husband would contend that the respondent / wife is not entitled to claim maintenance from the revision petitioner / husband as per Section 125(4) of the Code of Criminal Procedure, 1973, since the respondent / wife left the matrimonial home, without any sufficient reason and on her own volition. The contention of the revision petitioner / husband cannot be accepted taking into the consideration of the events from 05.03.2013 onwards as stated in the previous paragraphs. It is also admitted that the respondent / wife left the matrimonial house on 20.04.2013 while the revision petitioner / husband was at Bangalore due to his official work from 19.04.2013 to 24.04.2013. The Revision Petitioner / husband filed HMOP No.204 of 2013, for divorce before the Sub Court, Tambaram, on 18.04.2013 and on the next day, he left for Bangalore. The respondent / wife has also sent messages on 20.04.2013 from her Mobile to the Mobile number of the revision petitioner / husband, as follows:-

"I stay with my family at Tambaram, as you are in Bangalore"

" As per you told to go to Bangalore as office visit I am going to stay with my parents in Tambaram today night."

11. Considering the above facts and circumstances it cannot be said that the respondent / wife left the matrimonial house without sufficient reasons and she deserted the matrimonial home on

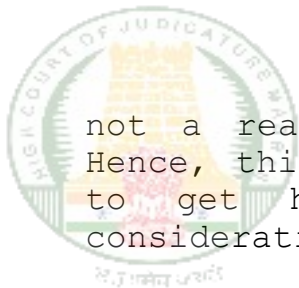


her own volition. The defence taken by the revision petitioner / husband under Section 125(4) of Cr.P.C., is not maintainable. Hence, the Criminal Revision Petition filed by the revision Petitioner / husband is liable to be dismissed.

12. The respondent / wife was Awarded by the trial Court for a sum of Rs.5000/- per month towards her maintenance from the date of filing of the petition in M.C.No.82 of 2013, under Section 125 Cr.P.C. Before the Family Court, the respondent / wife claimed a sum of Rs.25,000/- per month towards her monthly maintenance from the Revision petitioner / husband. The respondent has pleaded in her maintenance petition that the revision petitioner / husband is working at CMS Info Systems Private Limited and getting a sum of Rs.80,000/- per month towards his salary. The above facts are not denied in the counter statements filed by the revision petitioner / husband in M.C.No.82 of 2013. The revision petitioner / husband has also not stated his monthly salary in his proof affidavit filed in M.C.No.22 of 2013. The Revision petitioner / husband was examined as R.W.1 in M.C.No.82 of 2013 and after cross-examination of R.W.1 by the respondent / wife, R.W1 has produced his pay particulars for the month of February-2015 and marked as Ex.R14 and he has admitted that he is an Income Tax Assessee and his total salary is Rs.49,000/-.

13. On perusal of Ex.R.14 would reveal the fact that the net salary of the revision petitioner / husband is Rs.44,386/-. It is also admitted that the mother of the revision petitioner / husband also subsequently expired. The Revision Petitioner / husband has also admitted that his sister, who is a widow, and her daughter are living separately. The revision petitioner / husband has no issue at all through the respondent / wife out of their lawful wedlock. It is well settled principles of law that there can be no evidence without any pleadings. The revision petitioner / husband has not pleaded in his counter statement filed in M.C.No.82 of 2013 regarding his monthly salary. The respondent / wife also contested the case of divorce filed by the revision petitioner / husband and is pending before the Family Court, Madurai. The Revision petitioner / husband has not produced any documents or evidence to show that the respondent / wife is earning. It is also admitted that the respondent had obtained degrees in M.Sc., B.Ed., but not employed anywhere. The respondent / wife is living separately with her parents from April 2013 onwards. The respondent / wife has also admitted in Ex.P13 that the Revision Petitioner / husband is indebted to many persons. The revision Petitioner / husband is legally and morally bound to maintain her wife / respondent.

14. Considering the monthly income of the revision petitioner / husband being received from the Company in which he is working from 2015 onwards and also day-to-day needs of the respondent / wife, escalating food prices, medical expenses and also necessary other requirements of the respondent / wife, to lead a decent life with status, the maintenance amount awarded by the trial Court is



not a reasonable one, in the considered opinion of this Court. Hence, this Court concludes that the respondent / wife is entitled to get higher quantum of monthly maintenance, taking into consideration of the education and social status of both parties.

15. In the result, the Criminal Revision Petition No.497 of 2015 stands dismissed and Cr1.R.C.No.529 of 2015 is partly-allowed by modifying Award of maintenance passed in M.C.No.82 of 2013 on 04.08.2015 by the Family Court, Madurai. Accordingly, the monthly maintenance awarded by the trial Court is enhanced to Rs.15,000/- (Rupees Fifteen Thousand Only) from Rs.5,000/-. The revision petitioner / husband is directed to deposit the arrears of maintenance due to the respondent / wife as on date, after deducting the payments already made, if any, to the credit of M.C.No.82 of 2013, Family Court, Madurai, within a period of two months from the date of receipt of a copy of this order. The revision petitioner / husband is also directed to deposit the enhanced future monthly maintenance amount, now determined by this Court, from the date of this order, on or before 10th day of every English Calender month, to the respondent / wife. On such deposit of arrears of maintenance and future monthly maintenance are being made, the revision petitioner / wife is also permitted to withdraw the said maintenance amounts from the concerned Court, on proper application. Both the parties are directed to bear their costs on their own.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The Judge,
Family Court, Madurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

3.The Record Keeper,
Criminal Record Section
Madurai Bench of Madras High Court.

+One cc to M/s.D.Geetha, Advocate, SR.No.94409

+4 ccs to M/s.R.Suganya (Party-in-Person),

SR.Nos.94897 and 94896

MPK

RL/9C/6P/KK/SAR1/5/1/2018

Orders made in
Cr1.RC (MD) Nos.497 & 529 of 2015

Dated:-

22.12.2017