

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.03.2018

Pronounced on : 23.04.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.27 of 2018
and
Crl.M.P.No.143 of 2018

S.Sathiskumar ... Petitioner/ Respondent

Vs.

1.R.Thangamani @ Mainavathy

2.Minor Vaishavi
Rep. by her mother

... Respondents/ Petitioners

Prayer: Criminal Revision Case has been filed under Section 397 of Cr.P.C. r/w Section 401 of Cr.P.C., to set aside the order made in M.C.No.3 of 2014 dated 14.11.2016, on the file of the learned Family Court, Erode, Erode District, by allowing this Criminal Revision Petition.

For Petitioner : Mr.K.Karthikeyan

For Respondents : Mr.M.Guruprasad

ORDER

This Criminal Revision Case has been filed to call for the records from the file of the Family Court, Erode in its Order in M.C.No.3 of 2014 dated 14.11.2016 and set aside the same, wherein, maintenance amount has been ordered to the respondents.

2.The case of the petitioner / husband is that the Family Court, Erode, in M.C.No.3 of 2014 in its order dated 14.11.2016 has directed the petitioner / husband to pay maintenance to the first respondent Rs.2,500/- per month and Rs.5,000/- to the second respondent till she attains the age of major. Challenging the order passed under section 125 Cr.P.C. the petitioner herein has filed the present Revision Petition, questioning the correctness of the order.

3.The learned counsel appearing for the petitioner

contented that the marriage was solemnised on 30.04.2007 and the respondent lived only for a period of three months with the petitioner. The respondent insisted the petitioner to establish separate house for them to lead life and due to economic inability the petitioner could not meet out the same. The respondent had quarrel over the issue and left to her parent's home. The first respondent gave birth to the second respondent on 10.04.2008 at Erode. When the petitioner visited the hospital to see his daughter, he has been prevented by his brother-in-law and others. The well wishers conducted mediation and comprise for reuniting them. But, the same ended in vain.

4.The learned counsel for the petitioner further contented that the first respondent made unnecessary allegations against the petitioner and the petitioner prayed for joint family with his parents. But, due to this the first respondent deserted the petitioner. The petitioner is going for daily coolie job with the Kulathupalayam Panchayat under the Mahatma Gandhi National Rural Employment Guarantee Act 2005. The petitioner does not have any means to lead his life except income derived from the above source. Further, he has to maintain his aged parents. The ancestral agricultural properties are very little and did not fetch any income to support his life.

5.The learned counsel for the petitioner, further argued that, the maintenance awarded by the Family Court, Erode is excessive and the petitioner do not have any means to pay the same. The first respondent is employed in a leading private concern and leading sophisticated life. The first respondent has acquired properties on 09.10.2013 on her name, out of her salary. But, the petitioner is unable to lead a decent life with his meagre earnings. Further, the respondents have also filed partition suit in O.S.No.69/2017 on the file of Sub Court, Erode claiming share / partition from the ancestral properties of the petitioner. Further, the first respondent also not came forward to lead life as per the order of the Restitution granted in HMOP.No.72 of 2010 on the file of II Additional Sub Court, Erode.

6.Per contra, the learned counsel for the respondents would content that the marriage was solemnized on 30.04.2007 and at the time of marriage, 25 sovereign of Gold jewels and Rs.30,000/- cash was given as dowry to the petitioner and the petitioner used to take alcohol and beaten the first respondent. The well wishers conducted mediation and the same was not fruitful. The petitioner has agricultural lands and one house for dwelling and he has sufficient means to pay the maintenance to the respondents and prayed to confirm the order of the Family Court, Erode.

7.I have heard Mr.K.Karthikeyan learned counsel appearing for the petitioner and Mr.M.Guruprasad, learned counsel appearing for the respondents and perused the entire records.

8.On perusal of the records produced by way of typed set of papers, it was ascertained that the first respondent has signed the documents in Document No.433 of 2008 in Sivagiri Sub Registrar Office for availing financial assistance to her parents home. Further, the petitioner has filed HMOP.No.72 of 2010 before the learned II Additional Sub Court, Erode, for restitution of conjugal rights and the same was allowed on 13.12.2010. In the said proceedings, the first respondent in her cross examination has accepted to lead life with the petitioner. The petitioner on 10.05.2012 has given a complaint to the Kodumudi Police Station, calling for his wife to lead life together. Thereafter also the first respondent not gone with the petitioner to lead life together.

9.The petitioner thereafter filed HMOP.No.244 of 2014 before the learned Family Court, Erode, seeking divorce, since, the first respondent refused to lead life as per the restitution of conjugal right's order. The same was allowed and divorce was granted to the petitioner. Against which, the first respondent filed CMA.No.44 of 2017 before this Court, and the Hon'ble Division Bench, dismissed the same on 22.09.2017 and granted decree of divorce.

10.At this juncture, this Court has to exercise the powers under Section 397 r/w 401 Cr.P.C. exercising the revision jurisdiction of this Court and test the orders of the Family Court, Erode and whether any interference is warranted on the orders of the Family Court, Erode.

11.The petitioner pleads inability to pay the maintenance on monthly basis due to his inconsistent income pattern and also pleads that the first respondent is not entitled for maintenance, since she has not willing to lead the life with the petitioner. The respondent wilfully deserted the petitioner and not shown any interest to lead life together. From the typed set of papers, it is clear that the wife has not come forward to lead the life even after the decree in HMOP.No.72 of 2010, granting restitution of conjugal rights to the petitioner. Further, a police complaint was also lodged by the petitioner to lead life together, that was also turned down by the first respondent. This was also reflects in the judgement of this High Court in CMA.No.44 of 2017, dated 22.09.2017. The Court took note of the sale deed in favour of the first respondent in Document No.1669 of 2013. Further, she is employed in a private concern and leading a decent life. Further, she has not shown any interest to lead life together with the petitioner. But in

the depositions, the first respondent has expressed her willingness to lead life with the petitioner. But, contrary to the same, she has not lead the life with the petitioner. The Division Bench of this Court took note of the same and granted divorce. Further, she has filed O.S.No.69/2017 claiming partition in the ancestral properties of the petitioner.

12.The Hon'ble Supreme Court of India, in the judgement reported in 2005(3) SCC 636 in Savitaben Somabhai Bhatiya vs State Of Gujarat and Ors has held that the maintenance allowance can be paid in lump sum and the same would fetch some interest on monthly basis. In 2008(2) SCC 316 Chaturbhuj vs Sita Bai has held that the burden is placed upon the wife to show that the husband has sufficient means to pay the maintenance. The case on hand is different in nature, wherein, wife has means to lead life, but, the husband is going for a coolie job under the Government scheme, and his ancestral agricultural properties were very small that were insufficient to lead life with his aged parents. The wife has deserted the husband and even after decree passed granting restitution of conjugal rights, she has not come forward to lead life, thereafter only, the husband filed divorce and decree granted. There was inaction on the part of the first respondent in leading life with the petitioner. As per Section 125(4) of the Code of Criminal Procedure, a wife is not entitled for maintenance, when she left the husband without any sufficient reasons. The case on hand also comes under the above explanation clause.

13.This Court on the perusal of the above documents / evidence / depositions and upon its anxious consideration to the rival submissions and the peculiar nature of the case and applying the above principles of law, laid down by the Hon'ble Supreme Court of India, this Court liable to be disposed the revision.

14.In the result:

(a) This Criminal Revision Case is allowed.

(b) The maintenance ordered in favour of the first respondent / wife by the Family Court, Erode in M.C.No.3 of 2014 dated 14.11.2016, is set-aside.

(c) The maintenance ordered to second respondent is made as a lump sum of Rs.3,00,000/- (Rupees Three Lakhs only) and the same is directed to be deposited into the Family Court, Erode by the petitioner. Upon the same, the Family Court is directed to put the same in a Nationalised Bank as fixed deposit and the accrued interest shall be disbursed to the second respondent, till she attains major. Thereafter, the second respondent is entitled to receive the fixed deposit.

(d) Time to deposit the lump sum is eight weeks from the date of receipt of a copy of this order, failing which the Family Court, Erode may proceed in accordance with law.

(e) This Court not expressed any opinion on the partition suit in O.S.No.69 of 2017 and parties are at liberty to work out in the manner known to law.

(f) Connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

vs

To

1.The Family Court, Erode.

2.The Chief Judicial Magistrate Court, Erode.

+1cc to Mr.M.Guruprasad, Advocate, sr.no.30461

+1cc to Mr.K.Karthikayan, Advocate, sr.no.31936

Crl.R.C.No.27 of 2018

and

Crl.M.P.No.143 of 2018

SA(CO)

RRK(29/05/18)

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