

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.R.C.No.537 of 2018

and

CRL.M.P.No.6350 of 2018

1. Selvi

2. Minor Hirithikesh .. Petitioners

Vs

Munian .. Respondent

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., seeking to set aside the order passed in M.C.No.19 of 2012 dated 22.02.2018 on the file of the learned Judicial Magistrate Court, Thirukovilur, Villupuram District.

For Petitioners : Mr. K.Krishnan

For Respondent : Mr.S.Venkatesh

O R D E R

This petition has been filed seeking to set aside the order passed in M.C.No.19 of 2012 dated 22.02.2018 on the file of the learned Judicial Magistrate Court, Thirukovilur, Villupuram District.

2. The 1st petitioner is the wife and the respondent is the husband. According to the 1st petitioner, on 06.08.2012, the 1st petitioner/wife filed a petition in M.C.No.19 of 2012 under Section 125 Cr.P.C. before the Judicial Magistrate Court, Thirukovilur and subsequently, on 22.02.2018, the Judicial Magistrate, Thirukovilur, dismissed the said maintenance case and observed that the minor child who is the second petitioner herein, is now with the respondent/husband and therefore, rejected the maintenance in respect of minor child. As against the dismissal order dated 22.02.2018, the present revision is preferred before this Court.

3. The case of the 1st petitioner is that the marriage was solemnized between the 1st petitioner and the respondent on 03.11.2006 at respondent's home and out of their lawful wedlock, they were blessed with a male child on 24.04.2007. At the time of marriage, the 1st petitioner's mother gave dowry of 7 ¼ sovereign gold jewels and other household articles. After the marriage, the activities of the respondent were totally changed and he did not take care of the petitioners and thereafter, the respondent separated from the petitioners and lived at his native place viz., Devanur, from 2008 till 2015. After filing the maintenance petition, the respondent, without the consent of the 1st petitioner, has taken away the minor child from her. It is further stated that the respondent is working as a Teacher in the Government Higher Secondary School, at Devanur Village, Thiruvannamalai District and he is getting salary of Rs.45,000/- p.m.. Apart from that he purchased a plot to the extent of 1140 sq.ft. bearing S.No.65/4A, S.No.53/3, S.No.65/48 under a registered sale deed on the file of Joint Sub Registrar II, Thiruvannamalai and also having own house in S.No.29/11C to the extent of 7 ½ cent at Devanur Village and a land to the extent of 20 cents in the same village in S.No.65/48, Thiruvannamalai Taluk and District. On the basis of the same, the 1st petitioner filed a maintenance petition before the lower Court. However, the lower Court taking into consideration that the wife has not disclosed any reason in her petition or evidence to prove that she has a genuine reason for refusing to live with her husband and the same has been proved by sufficient evidence. It further held that the husband has not proved the allegation that his wife is having illicit intimacy with another person through sufficient evidence and came to the conclusion that the husband is not liable to pay maintenance to the wife and since the minor is living along with his father, the maintenance claimed in respect of minor is also dismissed.

4. The learned appearing for the 1st petitioner would submit that now the 1st petitioner is ready to take care of the minor child, since the minor child is with the respondent. The learned counsel for the 1st petitioner would submit that initially she was working in the private nursing home and thereafter, she left the job and residing at Devanur village and in the said village, there is no such nursing home available for getting employment and that the respondent deserted her and now she is living without any job and that it is very difficult for her to mete out her day-to-day affairs, but the lower court, without considering all these aspects, refused to award maintenance which is illegal and unsustainable in law.

5. The learned counsel for the respondent would submit that the minor child is now with the respondent and he is taking care of him and that the 1st petitioner is working at private nursing home, Chennai and earning a sum of Rs.20,000/- p.m. and when a

person is sufficiently earning from the nursing home, awarding maintenance to her, is unsustainable one and that the lower Court has rightly refused the maintenance in favour of the 1st petitioner. He would further submit that since the 1st petitioner deserted the respondent, on 30.06.2013, he has filed a petition in H.M.O.P.No.92 of 2013 before the Sub Court, Tiruvannamalai, seeking divorce and the same is still pending. He would further submit that the 1st petitioner, on her own accord, separated from the respondent and therefore, there is no need to provide maintenance towards her.

6.Considering the facts and circumstances of the case, one of the main grounds urged by the respondent against the 1st petitioner is that she is having illegal intimacy with another person. However, there is no proper material evidence is available to prove the said allegation by the respondent and the lower Court also not accepted the said allegation. However, taking into consideration the 1st petitioner is working in the private nursing home, to that effect, there is no proof available as she is working in the private nursing home. In the absence of any material to prove the allegations made against the 1st petitioner, the lower Court refused to award the maintenance in favour of the 1st petitioner is unsustainable.

7.On the basis of the present cost of living and that the petitioner is living at Devanur Village, Thiruvannamalai District, this Court fixed a sum of Rs.5,000/- as monthly maintenance in favour of the 1st petitioner. Accordingly, this revision is allowed and the order passed in M.C.No.19 of 2012 by the Judicial Magistrate, Thirukovilur, is set aside and the respondent husband is directed to pay a sum of Rs.5,000/- as monthly maintenance from the date of petition viz., 06.08.2012 and it is made clear that in respect of arrears is concerned, the respondent is directed to deposit the same to the credit of M.C.No.19 of 2012 on the file of the Judicial Magistrate, Thirukovilur and the respondent is directed to pay maintenance before 5th of every English calendar month and on such deposit being made, the respondent/wife will be entitled to withdraw the same. As regards the month of September, 2018, the respondent shall deposit a sum of Rs.5,000/- on or before 20.09.2018. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kal

To

1. The Judicial Magistrate Court,
Thirukovilur,
Villupuram District.

+1cc to Mr.K.Krishnan, Advocate, S.R.No.62753

+1cc to Mr.S.Kumaradevan, Advocate, S.R.No.63035

CRL.R.C.No.537 of 2018
and
CRL.M.P.No.6350 of 2018

rrs 17/09/2018



WEB COPY