

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.09.2018

C O R A M
THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.R.C.No.1415 of 2017

H.Musyyabmehdi

..Petitioner

Vs.

1. Sana Fatima
2.Minor Ayas Abbas

...Respondents

PRAYER: Criminal Original Petition is filed under Section 397 r/w.401 of the Code of Criminal Procedure to call for the records in respect of the order passed by the learned Family Court Judge, Vellore dated 16.08.2017 in F.C.M.C.No.137/2014 and set aside the same in view of the above mentioned grounds.

For Petitioners : Mr.D.Rajagopal

For Respondents : Mr.S.Saravanakumar

O R D E R

This criminal original petition has been filed to call for the records in respect of the order passed by the Family Court Judge, Vellore dated 16.08.2017 in F.C.M.C.No.137/2014 and set aside the same in view of the above mentioned grounds.

2.For the sake of convenience, the petitioner and the respondents will be referred to as the husband and the wife respectively.

3.The case of the husband is that the marriage was solemnized on 05.04.2010 as per Islamic rites and customs. The said marriage was arranged by the elders of the petitioner and the respondent and held before elders of Jamath. At the time of the marriage, the 1st respondent's parents presented 75 sovereign of gold jewels, 5 sovereign of gold coins and 2 ½ kg silver articles to the 1st respondent along with household articles as 'Sridhan'. Due to their wedlock, a male child was born. Thereafter, at the instance of the family members, the husband demanded Rs.10 lakhs as dowry from her parents. While she refused to do so, she was harassed by broken the house hold articles given by the wife's parents and open the gas cylinder and intimidated her that she will set fire. Thereafter, the wife lodged a complaint before "Shia Isnai Ashri Jamath, Big Alipura Street, Vellore". As per the Jamath decision, both the petitioner and the first respondent started a family at

Thaipanamara Street, Vellore. Subsequently, the wife asked to return back her 'Srithana articles', where the parents of the husband demanded to pay the expenses of the marriage and get back the 'Srithana' articles. On the insistence of the parents of the husband, he demanded a sum of Rs.10 lakhs to develop the ready made shop 'Sagar Collection' and after receiving the the said sum, he developed the shop and changed the same of the name of the shop 'Perfect Collection'. Even thereafter, their life ran into rough weather. The 1st respondent lodged a complaint before the All Women Police Station on 06.09.2013. Since the petitioner never turned up to continue with the respondents, they filed a petition under Section 125 of the Code of Criminal procedure seeking maintenance on the ground that the husband is earning Rs.80,000/- p.m. by running ready made shop and claiming a sum of Rs.15,000/- to her and Rs.10,000/- to his son.

4.After elaborate discussion, on 16.08.2017, the lower Court awarded monthly maintenance in favour of the respondents, i.e. Rs.5,000/- to the 1st respondent and Rs.3,000/- to the 2nd respondent from the date of filing of the maintenance petition. As against the order of the lower Court, the present revision case is preferred.

5.The learned counsel for the petitioner would submit that the 1st respondent voluntarily left the matrimonial home and that no maintenance can be paid to the 1st respondent only on the ground that she is working as teacher in the school and earning sufficient income and claiming maintenance is unsustainable one.

6.The learned counsel for the respondents would submit that the 1st respondent was worked in the private school and at present, she left the job and she is unable to maintain herself and her son and that the son is studying in private school. By spending huge amount towards school expenses and to face day-to-day live, the respondents are forced to file the maintenance petition seeking maintenance.

7.As per Section 125(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 refused to live with her husband, or if they are living separately by mutual consent." Even a woman who has been divorced from her husband or has obtained a divorce from him, is entitled to maintenance from him till she gets remarried, provided she is not living in adultery till such time. Of course, the other conditions enumerated under Sub-sections (4) and (5) are not applicable to such a divorced woman. On the ground that his wife i.e. the respondent No.1 deserted him for no good reason or any legally justifiable cause, yet in such circumstances also, the wife is entitled to claim maintenance under Section 125 of the Cr.P.C.

8.Considering the submissions made on either side and following settled proposition of law, this Court is of the view that though the amount claimed by the respondents is Rs.25,000/- p.m., however, the lower Court by considering the present cost of living and the 2nd respondent is studying in private school, had rightly awarded a sum of Rs.8,000/- [Rs.5,000/- + Rs.3,000/-], which is just and reasonable and therefore, there is no need to interfere with the order of the lower Court.

9.In the result, the present Criminal Revision Case is dismissed as devoid of merits. The learned counsel for the petitioner draw the attention of this Court that while admitting the case, this Court has granted interim stay on condition that the petitioner has to deposit 50% of the arrears of maintenance and the said condition has been complied with. Taking note of the said submission, the petitioner is directed to pay the arrears amount [if any amount already paid, the same has to be deducted] and the petitioner shall continue to pay the maintenance amount of Rs.5,000/- and Rs.3,000/- per month to the respondents 1 and 2 before 5th of every English calendar month.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Family Court Judge,
Vellore

2.The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.D.Rajagopal, Advocate, SR. No. 65341
+3cc to Mr.S.Saravanakumar, Advocate, SR. No. 64833

CrI.O.P.No.1415 of 2017

PA (CO)

rrs (23/10/2018)