

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2018

C O R A M

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.R.C.No.394 of 2017 &
Crl.M.P.No.3622 of 2017

T.K.Nehru

..Petitioner

Vs.

Priyavathi
...Respondent

PRAYER: Criminal Original Petition is filed under Section 397 r/w. 401 of the Code of Criminal Procedure to set aside the order dated 01.12.2016 made in F.C.M.C.No.17 of 2016 on the file of the Family Court, Dharmapuri.

For Petitioner : Mr.V.Sakkarapani

For Respondent : Mr.C.Murali

O R D E R

This revision petition has been filed seeking to set aside the order dated 01.12.2016 made in F.C.M.C.No.17 of 2016 on the file of the Family Court, Dharmapuri.

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

3.The facts of the case before the lower Court are as follows:

The marriage was solemnized between the petitioner and the respondent on 30.06.2006 at Dharmapuri as per the Hindu rites and customs. They lived together happily. Subsequently, the husband started harassing her by demanding dowry with the support of his parents and his brother. However, the wife tolerated all their atrocities considering the family unity. In the year 2008, the husband assaulted her for want of dowry and driven out her from the matrimonial home. Thereafter, she is residing in her parental home. Taking advantage of the same, the husband married one Vanmathi and started to live with her. Even

thereafter, the petitioner had not taken care of the respondent wife. The wife is struggling to lead her day-to-day life whereas the husband earning Rs.1,00,000/-p.m. towards silk business. Accordingly, the wife filed a petition under Section 125 of the Code of Criminal Procedure in F.C.M.C.No.17 of 2016, claiming a sum of Rs.15,000/- p.m. In order to establish the respondent's case, she filed Exs.P1 and P2 before the lower Court.

[ii] The husband filed a counter in the maintenance petition. The sum and substance of the counter filed by the husband is as follows:

The claim petition filed by the wife is false, frivolous, unsustainable in law and on facts of the case and he denied the entire allegations made in the claim petition, however, he admitted the marriage between them and denied the dowry harassment against him. It is further stated that she had deserted him without any reasonable cause. However, the wife lodged a complaint against the husband and his family members for the offence under Section 494 IPC and the same is pending before the Judicial Magistrate Court, Palacode. The husband is not having permanent job and earning Rs.5,000/- through temporary plastic shop. In order to establish his case, the petitioner filed two documents R1 and R2 and examined two witnesses RW1 and RW2. It is further submitted that he is also having responsibility to look after his aged and ailing parents. Hence, he is not in a position to pay maintenance amount of Rs.5,000/- p.m. Assailing the order of the lower Court, the present revision is filed.

4.The learned counsel for the husband would submit that the husband is an employee of the private shop and earning Rs.5,000/- p.m. Out of which, he has to maintain his parents and he is not in a position to pay Rs.5,000/- p.m. It is brought to the notice of this Court that on 09.03.2018, while issuing notice to the respondent, interim stay was granted on condition that he shall deposit 50% of the arrears accrued towards maintenance to the credit of E.C.M.C.No.17 of 2016 on the file of the Family Court, Dharmapuri, within a period of six weeks from the date of the order and the said amount was deposited on 06.04.2017. To that effect, a memo is also filed before this Court.

5.The learned counsel for the wife would submit that though the marriage was solemnized in the year 2006, the respondent/wife driven away from the matrimonial home and thereafter, since in the year 2008, she is living separately with her parental home. In the event of struggling to face day-to-day life, she filed a maintenance petition under Section 125 Cr.P.C. before the Court below claiming a sum of Rs.15,000/-

p.m. as maintenance. However, the Court below, considering the present cost of living, has ordered only a sum of Rs.5,000/- p.m. which is just and reasonable and this Court need not interfere with the order of the Court below.

6.The learned counsel for the husband would submit that though the marriage was solemnized on 30.06.2006, she voluntarily deserted him and started to live separately. Therefore, he filed HMOP No.49 of 2009 before the Court below seeking restitution of conjugal rights and the same was dismissed as withdrawn in the year 2014. The learned counsel brought to the notice of this Court to Section 125 of the Code of Criminal Procedure, which is extracted hereunder:

"125(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceedings, [as the case may be] from her husband under this Section, if she is living in a adultery or if, without any sufficient reason, she refuses to live with her husband or if they are living separately by mutual consent."

7.On perusal of Section 125 (4) of the Code of Criminal Procedure, The Court can refuse paying maintenance to the wife if she lives in adultery or without any sufficient reason, she refuses to live with her husband or if they are living separately by mutual consent. In the present case, the petitioner did not establish any of the grounds against the respondent.

8.Though the claim of Rs.15,000/- p.m. was made before the Court below, considering the present cost of living, the Court below has ordered only a sum of Rs.5,000/- p.m. as maintenance payable by the husband to the wife, which is just and reasonable and the same is hereby confirmed. Accordingly, this petition is dismissed as devoid of merits and the husband is directed to pay the maintenance amount of Rs.5,000/- p.m. on or before 5th of every English Calendar month to the respondent wife and further, the wife is entitled to withdraw the maintenance amount deposited in Court. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Judge, Family Court,
Dharmapuri.

+lcc to Mr.V.Sakkaraoani, Advocate, S.R.No.64529

Crl.R.C.No.394 of 2017 &
Crl..M.P.No.3622 of 2017

MP (CO)
GSP (22/10/2018)



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