

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :07.12.2018

CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.19621 of 2005

V.Karpagam

..Petitioner

Vs

1.Union of India,
Rep. By its Secretary,
Department of Defence,
New Delhi.

2.General Officer in Command (Commanding-in-chief),
Northern Command,
C/o 56 APO.

3.Additional Directorate General
Discipline and Vigilance (DV-3),
Adjutant General's Branch,
Army Head Quarters,
DHQ PO, New Delhi - 11.

4.M.Vinendran

..Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records of the second respondent in connection
with the impugned order in letter No.22018/1785/DV-4 dated
28.08.2004 passed by the second respondent and quash the same.

For Petitioner :Mr.M.Rama Moorthi

For Respondents :Mr.J.Madana Gopal Rao
Nos.1 to 4 Senior Panel Counsel for R1 to R3

R4 :Dismissed Vide Court Order
dt:24.06.2011.

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O R D E R

The order of rejection of the claim of the writ petitioner
for grant of maintenance to her in proceedings No.
22018/1785/DV-4 dated 28.08.2004 is under challenge in the
present writ petition.

2. The learned counsel appearing on behalf of the writ petitioner made a submission that the petitioner married 4th respondent Mr.M.Vinendran as per the Hindu Rites and Customs on 09.06.1997 at S.P.Kalyana Mandapam, Vembarpatty, Gopalpatty Post, Dindigul Taluk and District.

3. On account of continuous harassment and beating, the petitioner went to her parents' house. There was a dowry demand by the 4th respondent and on account of the harassment, the petitioner was forced to leave the matrimonial home at the instance of the 4th respondent. The petitioner filed Criminal Original Petition before the Competent Court of Law to claim maintenance under Section 125 of the Criminal Procedure Code. The Court granted maintenance to the writ petitioner and pursuant to the order of the Court, the respondents 1 to 3 also recovered the maintenance amount from the salary of the 4th respondent and disbursed the same to the writ petitioner as per the orders of the Court. However, suddenly, the maintenance amount was stopped by passing the impugned order dated 28.08.2004 stating that, due to the divorce granted by the Competent Court between the writ petitioner and the 4th respondent on 24.07.2004, the maintenance recovered from the 4th respondent had been stopped.

4. The learned counsel for the writ petitioner states that, the dissolution of marriage has not been granted and the marriage between the writ petitioner and 4th respondent is still in existence and the petition filed before the Family Court was under Section 9 of the Hindu Marriage Act for restitution of conjugal rights.

5. Even, in case of order passed by the Family Court, under Section 9 of the Hindu Marriage Act, if the couples have not resumed the matrimonial home, the same may be a ground for divorce. If any application is made for dissolution of marriage, however, if an order is passed for restitution of conjugal rights, the same cannot be construed as a dissolution of marriage.

6. The learned counsel for the petitioner states that the respondents 1 to 3 had misinterpreted the order of the restitution of conjugal rights and therefore, the maintenance which was stopped, has to be resumed and accordingly, the same is to be paid to the writ petitioner including the arrears of maintenance to be paid.

7. This Court is of an opinion that as per the contentions of the petitioner the Marriage between the petitioner and the 4th respondent is still in existence. If at all, any divorce has been granted, it is for the 4th respondent to produce such an order, if any, issued by the Competent Court of Law. In the

absence of any such order of dissolution of marriage the respondents 1 to 3 are bound to recover the maintenance amount and disburse the same to the writ petitioner on monthly basis.

8. This being the legal principles to be followed, this Court is of an opinion that the case of the writ petitioner deserves to be considered. However, there is a long delay in disposal of the writ petition. Under these circumstances, the writ petitioner is directed to submit an application along with all necessary documents once again to the respondents 1 to 3 and in the event of receiving any such application from the writ petitioner, the respondents 1 to 3 are directed to consider the same and accordingly, initiate action by following the procedures contemplated under law, within a period of 12 weeks from the date of receipt of the copy of such application, if any, submitted by the writ petitioner.

9. Accordingly, the present writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pns

To

- 1.The Secretary,
Union of India,
Department of Defence,
New Delhi.
- 2.General Officer in Command (Commanding-in-chief),
Northern Command, C/o 56 APO.
- 3.Additional Directorate General
Discipline and Vigilance (DV-3),
Adjutant General's Branch,
Army Head Quarters,
DHQ PO, New Delhi - 11.

+1cc to Mr.M.Ramamoorthi, Advocate, S.R.No.84720
+1cc to Mr.J.Madanagopal Rao, Advocate, S.R.No.84719

W.P.No.19621 of 2005

EV (CO)

rrs 07/01/2019