

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2018

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.695 of 2017
and
Crl.M.P.No.6629 of 2017

A.Dharmalingam ... Petitioner

vs.

T.Selvi ... Respondent

Prayer: Criminal Revision filed under Sections 397 and 401 of Cr.P.C., against the order dated 24.02.2017 made in M.C.No.29 of 2013 on the file of the Principal Family Court, Coimbatore.

For Petitioner : Mr.B.Lenin Balu

For Respondent : Mr.Dr.S.Swaminathan

JUDGMENT

This Criminal Revision Case is filed as against the order of the Learned Principal Family Judge, Coimbatore in M.C.No.29 of 2013 dated 24.02.2017 partly allowing the petition and directed the petitioner to pay sum of Rs.5,000/- per month as maintenance.

2.The Husband is a revision petitioner and respondent herein is the Wife of the revision petitioner.

3.The short facts are necessary for the disposal of this criminal revision petition. The marriage between the revision petitioner and the respondent herein took place on 30.06.1982 at the respondent's house. The petitioner herein is the maternal uncle of the respondent. Out of the said wedlock, they were blessed with a female child by name Poornimadevi. The dispute arosed between the petitioner and the respondent after marriage of their daughter Poornimadevi. Thereafter, the petitioner filed divorce petition against the respondent herein in H.M.O.P.No.995 of 2013 on the ground of cruelty and desertion. Pending divorce

petition, the respondent herein filed M.C.No.29 of 2013 seeking monthly maintenance of Rs.15,000/-. Both petitions were tried together and common order was passed by granting divorce in the above HMOP and ordered monthly maintenance of Rs.5,000/- to the respondent herein.

4.According to the respondent herein after the marriage, since the income of the petitioner herein was meager, the jewel of respondent was sold and they started a firewood shop at Trichy in the year 1984. The petitioner and respondent were look after the said business and the business was going well. Out of the said business they purchased 517 sq.ft. landed property at Ondipudur and constructed a house therein. The dispute between the petitioner and respondent arose after the marriage of their daughter. The respondent herein had left the petitioner herein and started to live with her parent's house from 26.02.2007 onwards. There after the respondent came to know that revision petitioner is living with another woman. When the same was questioned by the respondent herein, she was beaten up by the petitioner. The petitioner is doing agriculture work and as real estate broker and out of which he is earning Rs.50,000/- per month, but he failed to maintain the respondent herein. Hence, she filed the above maintenance petition, seeking monthly maintenance amount of Rs.15,000/- per month from the petitioner herein.

5.The revision petitioner who is the respondent in Trial Court filed the counter stating that he was always willing to continue the matrimonial life with the respondent herein. But she has not co-operated to have the restitution of conjugal right with him and deserted him and settled with her parents. All the efforts taken by the petitioner herein for reunion ended in vain. It is further stated that the respondent herein is not entitled to maintenance from the petitioner herein as she has deserted the petitioner for more than 30 years. The petitioner herein is more than 60 years old and due to his physical illness he is unable to do any work and he is struggling for his livelihood. He has no source of income. The petitioner herein is having debt of several lakhs which he borrowed to conduct the marriage of his daughter Poornimadevi. The respondent herein is having sufficient income from her parent's property. The income of the revision petitioner is insufficient for his personal maintenance and his medical expenses and therefore he is unable to pay the maintenance to the respondent.

6.On the side of the petitioner/husband, he himself was examined as PW1 and one Chandrasaker was examined as PW2 and on

his side Exs-P1 and P2 were marked. The respondent /wife examined herself as RW-1 and one Ponmai was examined on her side as RW-2. The Trial Court by order dated 24.02.2017 awarded a sum Rs.5,000/- per month towards maintenance to the respondent herein which is being challenged in this Criminal Revision Case.

7.I heard Mr.B.Lenin Balu, learned counsel appearing for the petitioner and Dr.S.S.Swaminathan, learned counsel appearing for the respondent and perused the entire records.

8.The short point is to be decided in this case is as to whether award of maintenance is exorbitant as claimed by the respondent herein and proved income.

9.While, arriving at quantum of maintenance for the wife and children, the Family Courts should have considered the entirety of the circumstances of the financial liability of the husband.

10.Now coming to the claim of maintenance, the Learned Counsel for the petitioner would submit that the petitioner has got no income to support himself, whereas the respondent is having properties of her parents from which she is deriving sufficient an annual income. Though the respondent herein claimed maintenance amount of Rs.15,000/- from the revision petitioner, in order to prove the same she has not filed any single document. Admittedly there is no proof that the petitioner /husband is getting any income from the immovable property. Therefore the Trial Court fixed notional income of Rs.15,000/- per month and directed the revision petitioner to pay a sum of Rs.5,000/- per month to the respondent herein. In the considered opinion of this Court, without having any proof for the income of revision petitioner, the Trial Court ought not to have fixed the monthly income at Rs.15,000/- on assumption and presumption and the same is liable to be set aside. But, in any event the revision petitioner owes legal and moral obligation to maintain his wife, the respondent herein.

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11.Therefore, taking into consideration of the old age of the petitioner, this Court, going by the normal standards of earning of the petitioner's stature, hold that he is liable to pay sum of Rs.2500/- per month towards maintenance to the respondent. Therefore, I am of the view that directing the revision petitioner to pay a sum of Rs. 2,500/- per month from the date of filing of maintenance petition would meet the ends

of justice. The award passed by the Trial Court in M.C.No.29 of 2013 dated 24.2.2017 stands modified to the above limited extend.

12.In the result:

(a) this Criminal Revision Case is allowed in part and the order of the Trial Court dated 24.02.2017 in M.C.No.29 of 2013 is set aside;

(b) the petitioner/husband is directed to pay sum of Rs.2,500/- per month to the respondent/wife towards maintenance from the date of filing of M.C.No.29 of 2013. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vs

To

The Principal Family Court,
Coimbatore.

+1cc to Mr.B.Lenin Balu, Advocate Sr.58123

+1cc to M/S.S.S.Swaminathan, Advocate Sr.57707

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Cr1.R.C.No.695 of 2017
and

Cr1.M.P.No.6629 of 2017

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