

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2018

DELIVERED ON : 27.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl. R.C.No.204 of 2018

S.Maheswari ... Petitioner/Appellant

Vs

D.Sankaran ... Respondent/Respondent

PRAYER : Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. against the order dated 10.11.2017 made in M.C.No.288 of 2012 on the file of the V Additional Family Court, Chennai.

For Petitioner : M/s.R.Udayakumar

For Respondent : Mrs.S.Sujatha

ORDER

This Criminal Revision Case has been filed by the petitioner against the order dated 10.11.2017 passed in M.C.No.288 of 2012 on the file of the learned V Additional Family Court, Chennai, dismissing the petition filed by the petitioner under Section 125 Cr.P.C.

2. Briefly stated case of the petitioner is as follows:

The marriage between the petitioner and the respondent was solemnized on 19.06.2005, after divorcing his first wife, and the respondent set up the matrimonial home at No.5/3, Pappathiamman Koil Street, Erukkancherry, Chennai. Immediately after the marriage, the respondent started demanding huge amount as dowry and all of a sudden without any reason, the respondent quarreled with the petitioner and left the matrimonial home and started to live at his sister's house at No.12, Veerakutty Street, Old Washermanpet, Chennai. From the date of marriage, she was living in the matrimonial home.

3. According to the petitioner, the respondent taking

advantage of his own wrong and in order to get rid of the petitioner in some manner, filed O.P.No.2772 of 2009 against the petitioner with false allegation by giving wrong residential address as if the petitioner was residing at No.60, New Forhans Road, Pattalam, Chennai.

4. The case of the petitioner is that the respondent was working in Indian Bank as Clerk at Harbour Branch and was getting monthly salary of Rs.40,000/- and neglected to maintain her. Therefore, the respondent is liable to pay maintenance to the petitioner. According to the petitioner, apart from his monthly salary, the respondent was owning a house property at No.3/5, Pappathiamman Koil Street, Erukkancherry, Chennai and he was getting total rental income of Rs.20,000/- per month. The petitioner was pulling on these hard days of life with tearful eyes and was experiencing great difficulty to maintain herself and she has no means to support her. Hence, she has filed the petition seeking maintenance of Rs.20,000/- per month.

5. Resisting the petition, the respondent filed counter stating that he never demanded dowry and it was true that he married the petitioner after divorcing his first wife. All that he was looking for was a spouse who would be his companion and share his happiness and sorrows. But unfortunately all that turned into a nightmare due to the conduct of the petitioner who due to her conduct drove him out of his own house. The premises where the petitioner claims that she was living with him is actually the respondent's own house built on land that he had purchased in 1998 and constructed by him before marriage. After driving him out of the matrimonial home, the petitioner continued to occupy it for some time and then locked it and went to her parent's residence. The respondent tried through many ways to sort out the issue, but it was of no avail and finally due to severe cruelty caused by her behaviour, the respondent filed divorce petition.

6. It is stated in the counter that the petitioner was living with her father and continues to live there. After having driven him out of his house, the petitioner claims that he should not show his residence as his permanent address. The respondent denied the monthly earning of Rs.40,000/-. According to the respondent, problems in the marriage due to the conduct of the petitioner have caused him so much anguish that he had missed out on career opportunities. The respondent was not getting monthly rent of Rs.20,000/- as alleged by the petitioner. The petitioner was a B.Com. Graduate and has been employed. She has sufficient assets and is wealthy. After ruining his life, the petitioner has now come up with a petition as a counter-blast only to harass him.

7. It is stated that the petitioner's father was employed in Wheels India and she is very much capable of maintaining herself. The petitioner never wanted to live with the respondent and after throwing him out of his own home, refused to live with him without any valid reason. Such being the case, the petitioner is not entitled to receive any maintenance and the respondent has not neglected her. It is stated that the petitioner has been conducting herself in a most fraudulent manner besides treating the respondent with extraordinary cruelty. Hence, prayed for dismissal of the petition.

8. Before the trial Court, along with M.C.No.288 of 2012, O.P.No.2772 of 2009 and O.S.No.332 of 2014 were tried together. Common evidence was recorded. The respondent examined himself as P.W.1 and marked Exs.P1 to P9. The petitioner examined herself as R.W.1 and marked Exs.R1 to R3.

9. Upon consideration of the oral and documentary evidence, the trial Court allowed O.P.No.2772 of 2009 filed by the respondent and thereby dissolved the marriage solemnized between the respondent and the petitioner on 19.6.2005. The trial Court dismissed M.C.No.288 of 2012 and O.S.No.332 of 2014 filed by the petitioner. Aggrieved by the order in M.C.No.288 of 2012, the petitioner has preferred this Criminal Revision Case.

10. Assailing the impugned order, Mr.R.Udhayakumar, learned counsel for the petitioner submitted that without analyzing the evidence, pleadings and documentary evidence of the petitioner, the trial Court dismissed the Maintenance Case and if the same have been properly appreciated, the trial Court would have allowed the same. He would submit that the trial Court failed to consider that when the respondent received a monthly salary of Rs.40,000/- and rental income of Rs.20,000/- totally Rs.60,000/- per month, a duty is cast upon the respondent to pay maintenance to his wife as she has no means to maintain herself.

11. The learned counsel further submitted that the trial Court failed to consider that it is only the respondent who left the petitioner from the marital home by deserting her and had filed the Original Petition for divorce with false and frivolous allegations. The learned counsel would submit that the trial Court failed to consider that it is the respondent who refused to live with the petitioner and had misconstrued the contents of the cross-examination of the petitioner. Therefore, the provisions of Section 125(4) Cr.P.C. are not applicable to the facts of the present case.

12. The learned counsel then contended that the trial Court failed to peruse the ingredients of Section 125 of Cr.P.C. and

thereby erroneously dismissed the petition on unsustainable points such as the petitioner in her cross-examination deposed that her husband has no capacity to live with her and she deserted her husband without any reasonable cause and also failed to perform her duty as a dutiful wife and prayed for setting aside the order of the trial Court.

13. Per contra, Mrs.S.Sujatha, learned counsel for the respondent submitted that the petitioner left the respondent without any reasonable cause and she was residing in her father's house. She would submit that the petitioner in her cross-examination deposed that the respondent has no capacity to live with her. Finding that the petitioner left the respondent in view of her adamant behaviour and also she had failed to perform duty as a dutiful wife, the trial Court rightly dismissed the Maintenance Case filed by the petitioner and therefore, there is no reason to interfere with the order of the trial Court.

14. I have considered the rival submissions of Mr.R.Udayakumar, learned counsel appearing for the petitioner and Mrs.S.Sujatha, learned counsel for the respondent and also perused the materials available on record.

15. Following are the proceedings initiated by the petitioner and the respondent and tried by the trial Court commonly:

- (i) O.P.No.2772 of 2009 filed by the respondent under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 for dissolution of the marriage between the respondent and the petitioner on the ground of petitioner's cruelty.
- (ii) M.C.No.288 of 2012 was filed by the petitioner under Section 125 Cr.P.C. seeking maintenance of Rs.20,000/- per month from the respondent.
- (iii) O.S.No.332 of 2014 has been filed by the petitioner for permanent injunction restraining the respondent from dispossessing her from the suit property.

16. The grievance of the petitioner is that after divorcing his first wife, the respondent married the petitioner and after the marriage they lived in the matrimonial home at No.5/3, Pappathiamman Koil Street, Erukkancherry, Chennai. Thereafter, the respondent started to demand dowry and all of a sudden, without any reason he quarreled with the petitioner and left the matrimonial home. He started to live at his sister's house. According to the petitioner, from the date of marriage, she was

living in the matrimonial home set up by the respondent. While so, the respondent had filed petition for divorce. Initially, though the respondent obtained an ex parte decree of divorce, subsequently, the petitioner filed petition to set aside the ex parte decree and the same was allowed.

17. Further grievance of the petitioner is that till date the respondent had neglected to maintain her and therefore, the respondent is liable to pay maintenance to the petitioner. According to the petitioner, the respondent was a retired employee of Indian Bank at Harbour Branch and was getting monthly pension, apart from getting the rental income of Rs.20,000/- by letting out his own house at Erukkancherry. The petitioner has no source of income. Hence, the petitioner has filed the petition for maintenance.

18. The respondent took a specific plea that the petitioner had left the respondent many times and has gone to her parents house on flimsy reason and she had left the respondent's house without any reasonable cause and while leaving the matrimonial home, she had taken away all her belongings. Therefore, the respondent is not liable to pay maintenance to the petitioner.

19. No proof has been filed by the petitioner to show that till date she is residing in the matrimonial home. Though in her evidence the petitioner deposed that gas connection and voter identification card were standing in her name, she had failed to produce the said documents. On the contrary, the respondent produced gas bills, which would show that on the date of filing of the suit by the petitioner against the respondent for permanent injunction, the respondent was in possession of the house in question. The petitioner has also failed to prove that the respondent left the family and was residing separately.

20. In the order impugned, the trial Court recorded that the respondent had proved that his wife (petitioner) was residing in the house of her father and that she left her husband (respondent) without any reasonable cause and she was residing in the house of her father. To disprove the said findings of the trial Court, the petitioner has not produced any material. Moreover, while answering Issue No.3 framed, the trial Court recorded as under:

"The wife stated in her written arguments that her husband is the owner of the suit property, that he leased out three houses, that he is receiving the rent for the three houses and that he is paying electricity charges for the house i.e., the suit property. It shows that the husband is in possession of the suit property.

The wife stated in her written arguments that she submitted Indian Gas Cylinder bill and address proof to show that she is in possession of the suit property. But she has not marked those documents on her side to prove her possession. Hence, the wife failed to prove that she is in possession of the suit property.

The wife stated in her petition filed in M.C.No.288 of 2012 that she is residing in the suit property and her husband is residing at No.12, Veekakutty street, Old Washermenpet, Chennai. She has not submitted any document to prove the above fact."

21. From the above findings of the trial Court, it is clear that the petitioner has not established that till date she was residing in the matrimonial home. On the contrary, the plea of the respondent that the petitioner left the matrimonial home and was living with her father was proved. In her cross-examination, the petitioner admitted that she was residing in her father's house.

22. When the wife left her husband without any reasonable cause and she refuses to live with her husband, she is not entitled to maintenance. In the case on hand, the petitioner was very rude by refusing to live with the respondent without any cause and moreover, she has not shown any interest in living with the respondent.

23. For proper appreciation, it would be necessary to extract Section 125(1)(a) and Explanation (b) thereto and Sub-section (4) of Section 125 of Cr.P.C.

125. (1) If any person having sufficient means neglects or refuses to maintain- (a) his wife, unable to maintain herself, or

...

A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is

not possessed of sufficient means.

Explanation. For the purposes of this Chapter,-

(a) ...

(b) 'wife' includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

...

(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 refuses to live with her husband, or if they are living separately by mutual consent.

(5)"

24. Sub-section (4) disentitles a wife to receive allowance in certain cases, one of them being "if, without any sufficient reason, she refuses to live with her husband". This sub-section governs the whole of Section 125. The respondent had filed petition for divorce on the ground of cruelty/desertion and the respondent had proved the said ground. The trial Court has also allowed the O.P. filed by the respondent.

25. It is plain and simple that the petitioner refused to live with her husband without any sufficient reason and, therefore, disentitled herself to receive maintenance under Section 125 of Cr.P.C.

26. If the wife fails to prove that she had been forced to live separately or that the doors of the matrimonial home have been shut by the husband or that her living with the husband is dangerous to her life and health or that the husband has incurred some disqualification under any statute to have her company, she would not be entitled to the grant of maintenance.

27. It is settled that neglect or refusal need not be specific and can be inferred from words, conduct and circumstances of the matrimonial life of the parties. Existence of justifiable grounds for wife's refusal to live with her husband can be a ground to presume the neglect attributable to the husband to maintain his wife. A woman is however entitled to live with her husband with that amount of decency and dignity which prevails in her class and the environment of the society to which she belongs. If the treatment of the husband does not permit wife to lead such a decent and dignified life, the same may amount to neglect and/or refusal to maintain her under the peculiar circumstances of each case.

28. In her evidence, R.W.1 admitted that she was residing in the house of her father, which clearly shows that the petitioner was interested in staying with her father and without any sufficient cause does not live with her husband. Therefore, she is not entitled to any maintenance under Section 125 Cr.P.C.

29. It would be pertinent to note that where the petitioner has no justification for withdrawing herself from the company of the respondent, she is not entitled to maintenance.

30. Prima facie, the materials produced before the trial Court would show that the petitioner deserted the respondent without any reasonable cause and as rightly held by the trial Court, the petitioner left her husband in view of her adamant behaviour and she had also failed to perform her duty as a dutiful wife.

31. In the present case, as stated supra, the petitioner refused to live with her husband without any sufficient reason and she had not taken steps for re-union with the respondent and in fact, the petitioner deposed in her evidence that her husband has no capacity to live with her. The conduct of the petitioner would clearly shows that without any sufficient reason, she was living separately and therefore, she is not entitled to claim maintenance and thus, the trial Court was right in dismissing M.C.No.288 of 2012 filed by the petitioner. Therefore, the present case clearly attracts the provision of Section 125(4) Cr.P.C. No valid grounds have been made out to interfere with the order of the trial Court. There is no illegality and/or perversity in the order of the trial Court and therefore, the Criminal Revision Case is liable to be dismissed.

32. In the result, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar

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//True copy//

Sub Assistant Registrar

vs

To

1. The V Additional Family Court, Chennai.
2. The Section Officer, Criminal Section,
High Court, Madras.

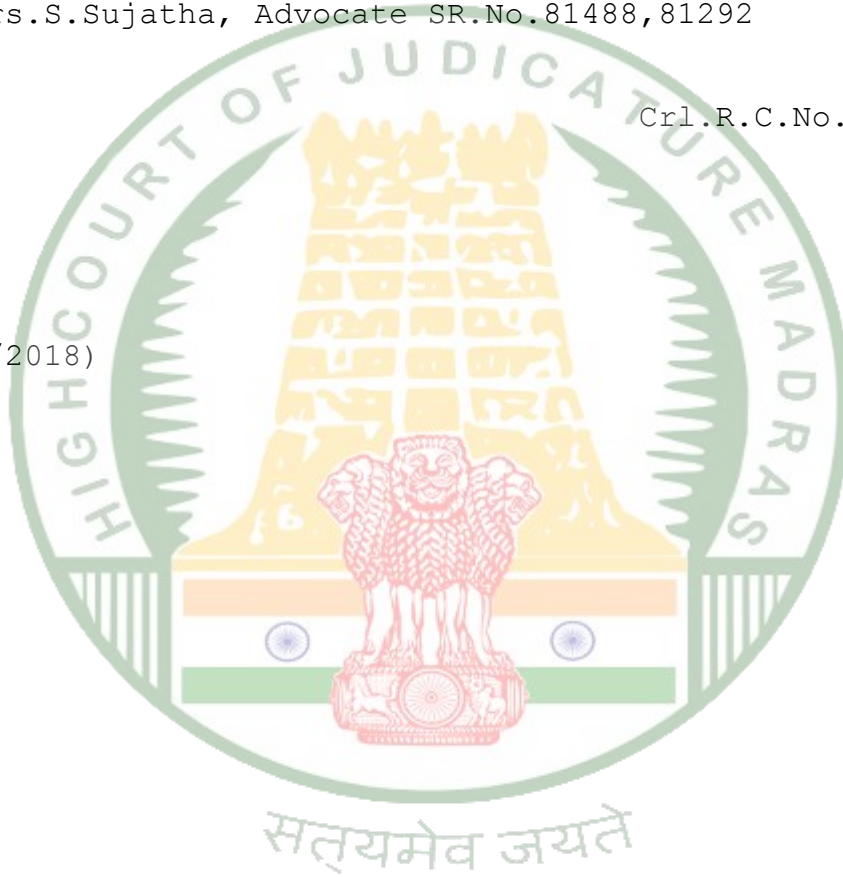
+1cc to Mr.R.Ravindraram, Advocate SR.No.80679

+2cc to Mrs.S.Sujatha, Advocate SR.No.81488,81292

Cr1.R.C.No.204 of 2018

MR (CO)

GMV (17/12/2018)



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