

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2018

DELIVERED ON : 29.08.2018

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.809 of 2017

and

Crl.M.P.No.7421 of 2017

Karuppan ... Petitioner

vs.

Rajammal ... Respondent

Criminal Revision Case is filed under sections 397 and 401 Cr.P.C. to set aside the order dated 10.05.2017 in M.C.No.12 of 2016 on the file of the learned Judicial Magistrate, Paramathi.

For petitioner : Mr.S.Balasubramanian

For respondent : Mr.P.Tamilavel

ORDER

This Criminal Revision Case has been filed against the order dated 10.05.2017 passed in M.C.No.12 of 2016 on the file of the learned Judicial Magistrate, Paramathi directing the petitioner to pay maintenance of Rs.4,000/- to the respondent.

2. The respondent wife has filed the petition in M.C.No.12 of 2016 seeking maintenance of 10,000/- from the petitioner husband alleging that the marriage between them was solemnized in the year 1967 and from the wedlock three sons and one daughter were born. The petitioner was a retired employee of Highways Department and was receiving monthly pension. On 4.12.1998, the petitioner sent the respondent out of the family and the respondent filed maintenance petition before the learned Judicial Magistrate Court at Paramathi, wherein a settlement was entered into. As per the settlement arrived, the petitioner was directed to pay Rs.300/- per month towards maintenance and the petitioner had paid the maintenance for months together and thereafter, committed default in paying the maintenance. According to the respondent, due to age, she could not able to do any work to meet her livelihood. The petitioner was financially sound and in fact he had given huge amount to third

parties for interest and getting Rs.25,000/- per month and he was also receiving a sum of Rs.10,000/- towards pension. Hence, the respondent has filed the petition claiming Rs.10,000/- towards maintenance from the petitioner.

3. Resisting the petition, the petitioner has filed the counter stating that in the panchayat, it was decided to give a share to the respondent in the house property bearing No.5/28 and accordingly, the respondent was residing in a portion of the house bearing No.5/28. While so, on 10.3.2015, the respondent and her daughter entered into the house of the petitioner and had taken away Rs.5000/-, half sovereign gold, sale deed, patta, ration card, medical records of the petitioner and electricity payment receipt etc. and they have also beaten him. It is stated that the petitioner was suffering lot of ailment and he was not in possession of any immovable property. In fact, the respondent had taken away the house property in which the petitioner was staying and he was not in a position to maintain himself. According to the petitioner, the respondent was working under 100 days work and was earning Rs.150/- per day. Further, the respondent's elder son was giving Rs.2000/- and her younger son was giving Rs.3000/- per month to the respondent. Therefore, the petitioner prayed for dismissal of the petition filed by the respondent.

4. Before the learned Judicial Magistrate, the respondent examined herself as P.W.1 and marked 2 documents. On the side of the petitioner, two witnesses were examined and 4 documents were marked.

5. Upon consideration of the oral and documentary evidence, the learned Judicial Magistrate, directed the petitioner to pay a sum of Rs.4000/- per month towards maintenance to the respondent on or before 10th of every month from the date of filing of the petition. Aggrieved by the same, the petitioner has filed the present revision case.

6. I heard Mr.S.Balasubramanian, learned counsel for the petitioner and Mr.P.Tamilavel, learned counsel for the respondent and also perused the materials available on record.

7. The learned counsel for the petitioner submitted that the learned Magistrate has failed to note that the petitioner was getting monthly pension of Rs.5000/- and erred in awarding Rs.4000/- towards monthly maintenance to the respondent. He would submit that the learned Magistrate failed to take into consideration the health condition of the petitioner. In any event, the monthly maintenance awarded by the learned Magistrate is excessive and ignoring the evidence adduced by the petitioner, the learned Magistrate awarded Rs.4000/- towards maintenance.

8. Reiterating the finding of the learned Magistrate, the learned counsel for the respondent submitted that taking into consideration of the financial status, the learned Magistrate ordered Rs.4000/- as maintenance. Since the amount of Rs.4000/- ordered by the learned Magistrate is reasonable, there is no need to interfere with the impugned order.

9. The grievance of the petitioner is that he was receiving pension of Rs.5,500/- per month and from the said amount he has to maintain himself and also look after his medical expenses. Apart from this, he has to repay the loan amount borrowed by him from third parties. As held by the learned Magistrate, nothing has been produced by the petitioner to show that he has to pay Rs.4,000/- per month towards the loan. Further grievance of the petitioner is that he has to bear the medical expenses from and out of the monthly pension amount received by him and to show that the petitioner was taking treatment, he has produced Ex.R1 to R4 before the trial Court. Admittedly, the petitioner has not examined the Doctor who has given Exs.R1 to R4.

10. As far as the maintenance amount of Rs.4,000/- awarded by the learned Magistrate is concerned, the Court has to see the financial capacity of the petitioner. According to the petitioner, he was receiving monthly pension of Rs.5,500/-. Nothing has been produced by the respondent to show that the petitioner was receiving more amount as pension. Moreover, the respondent has not produced any material to show that the petitioner was receiving interest amount of Rs.25,000/- per month as alleged by her.

11. It is to be noted that the petitioner was now aged 84 years and the respondent was aged 71 years. According to the petitioner, his elder and younger son were looking after the respondent and were paying some amount monthly to the respondent. The said fact has not been denied by the respondent. It is not the case of the respondent that her sons were looking after the petitioner and were paying amount to him. From the above, it is clear that from and out of the monthly pension only, the petitioner has to maintain himself. However, it is the bounden duty of the petitioner to maintain the respondent.

12. Considering the fact that spouses living separately and also the financial status of the petitioner, this Court finds that Rs.4,000/- per month awarded by the learned Magistrate is highly excessive and the same needs to be reduced. Taking note of the fact that the petitioner was receiving monthly pension of Rs.5,500/- per month and also in the interest of justice, it would be appropriate to direct the petitioner to pay monthly maintenance of Rs.2,500/- to the respondent wife and accordingly, the order of the trial Court is modified as under:

13. In the result,

- (a) The Criminal Revision Case is partly allowed;
- (b) The order in M.C.No.12 of 2016 dated 10.05.2017 on the file of the learned Judicial Magistrate, Paramathi, is modified and directed the petitioner to pay a sum of Rs.2,500/- (Rupees Two Thousand Five Hundred only) to the respondent wife towards maintenance from the date of filing of the petition;
- (c) The arrears amount from the date of filing of the petition till the date of this judgment to be paid to the respondent wife by the petitioner within a period of four weeks from the date of receipt of a copy of this order and thereafter, the petitioner is directed to pay the said modified maintenance amount of Rs.2,500/- on or before 10th of every calendar month. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate,
Paramathi.

+ 1 cc to Mr.S. Balasubramanian, Advocate SR.59166

+ 1 cc to Mr. P. Tamilavel, Advocate SR.59151

सत्यमेव जयते
Cr1.R.C.No.809 of 2017
and

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NM(CO)
EU(14/11/2018)

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