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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Revision No.722 of 2013
and
M.P.No.1 of 2013

Thaiyalnayagi .. Petitioner/Petitioner

Vs

Anaimuthu .. Respondent/Respondent

Prayer:- Criminal Revision filed under Sections 397 r/w 401 Cr.P.C., to call for the records in M.C.No.2 of 2010, dated 25.02.2013 on the file of the of the learned Judicial Magistrate No.II, Salem and set aside the same.

For Petitioner : Mr.K.Raja
for Mr.N.Kolandaivelu

For Respondents : Mr.R.Nalliappan
* * * * *

O R D E R

The present criminal revision has been filed against the order dated 25.02.2013 passed in M.C.No.2 of 2010 by the learned Judicial Magistrate No.II, Salem.

2.The petitioner is the wife and the respondent is the husband of the petitioner.

3.The facts leading to prefer this revision are as follows :-

(i)The respondent/husband married the petitioner/wife on 04.2.1970 according to their customs. During their wedlock, two children were born and they lived happily together for two years. Thereafter, the respondent developed illegal intimacy with some other lady and he ill treated his wife and driven out her from the matrimonial home. Therefore, she went to her parent's house and looked after their children.



(ii) She further submitted that her first son died leaving behind two children. Now she has become old and hence, she is unable to maintain herself and her grandchildren. Her husband, is having property worth Rs.50,00,000/- and he is having a cash balance of Rs.50,00,000/- in the bank. Apart from that, he is earning a sum of Rs.10,000/- per month in milk vending business. Though she demanded many times to give maintenance to her, he has never given any amount as maintenance. Hence, she issued a legal notice dated 25.09.2009 and the same was received by the respondent on 26.09.2009, for which, the respondent sent a reply notice dated 03.10.2009 denying the facts mentioned in the notice and stated that he is not in a position to give maintenance to the petitioner. Hence, she filed a petition in M.C.No.2 of 2010 under Section 125 of Cr.P.C on the file of the Judicial Magistrate No.II, Salem claiming maintenance of Rs.5,000/- per month.

(iii) The learned Judicial Magistrate, after considering the facts and circumstances of the case and after perusing the records dismissed the petition by order dated 25.02.2013.

(iv) Aggrieved against the said order passed by the learned Judicial Magistrate No.II, Salem, the petitioner/wife filed the criminal revision petition before this Court.

4. The learned counsel for the petitioner submitted that the respondent had illegal intimacy with some other lady and hence, he ill treated his wife and has driven out her from the matrimonial home. All these days, the petitioner is suffering very much for her food, clothing and shelter. Now, she is aged about 55 years and she is unable to go to coolie work and hence, she has no income to maintain herself and her grandchildren. In such circumstances, she filed a petition seeking maintenance before the Court below.

5. The learned counsel for the petitioner further submitted that the respondent is having a cash balance of Rs.5,00,000/- and he is earning a sum of Rs.10,000/- per month by doing milk vending business. Hence, the respondent is bound to pay a sum of Rs.5,000/- per month to the petitioner as maintenance. The learned Judge, without considering the facts and circumstances of the case, erroneously dismissed the petition. Hence, the present criminal revision petition has been filed by the petitioner.

6. The learned counsel for the respondent submitted that the respondent is living separately without any support and also maintaining his grandchildren. Further, he is a diabetic patient and he could not do the work as before he was doing. After she went from the matrimonial home, she was living with



some other person. Hence, the respondent is not liable to pay maintenance. Moreover, due to his old age, the respondent could not maintain himself and he is not in a position to pay maintenance. The learned Judge, after considering the facts and circumstances of the case and after considering the evidence available on both sides, has rightly, dismissed the petition. Hence, the criminal revision petition is liable to be dismissed.

7.This Court considered the rival submissions made by the learned counsel for both sides and perused the materials available on record carefully.

8.On a perusal of records, it is seen that the petition is filed under Section 125 of the Code of Criminal Procedure. Under the said Section, the petitioner has to prove that she is not able to maintain herself. If she proves the same, the husband has the bounden duty to maintain her by giving maintenance. Whereas in this case, admittedly, the marriage took place 40 years before i.e in the year 1970 and they lived together only for two years and they begot two children. After two years, from the date of marriage, she left the matrimonial home and went to her parent's home. For all these years, she has not claimed any maintenance from her husband. Now, she filed a maintenance petition before the Court below and the same was dismissed.

9.The petitioner, to prove her case, she examined herself as P.W.1 and marked 3 documents, namely, Ex.P.1, the legal notice dated 25.09.2002, Ex.P.2 Acknowledgment dated 26.09.2009 and Ex.P.3, the reply notice dated 03.10.2009 sent by the respondent/husband.

10.On the side of the respondent, 5 witnesses were examined as R.W.1 to R.W.5 and 7 documents were marked as Exs.R.1 to R.7.

11.In the cross-examination of P.W.1/wife, it is stated that she celebrated the marriage of their first son and the marriage of the second son was celebrated by both of them.

12.R.W.2 in his chief examination and also in the cross examination has stated that the son of the petitioner is having a lorry and she is also having a property along with a tiled house.

13.R.W.3 in his chief examination stated that the petitioner has a mini lorry and the petitioner is earning income through the lorry. She has also a property, which was conveyed by her father by executing a settlement deed and she conveyed the same in favour of her son.



15.A perusal of the above material records reveal that under Section 125 of the Code of the Criminal Procedure, the respondent proved the fact that the petitioner can maintain herself. To that effect, he filed a certified copy of the settlement deed executed by the father of the petitioner in favour of her and the same is marked as Ex.R.3. He also produced a letter from the RDO Office, which is marked as Ex.R.2. The above said witnesses and documents show that the petitioner can maintain herself.

17. Admittedly, both the petitioner and the respondent are more than 60 years old. The respondent proved that the petitioner is having sufficient income and she can maintain herself. But, the petitioner has failed to prove that the respondent is having sufficient means, petitioner is unable to maintain herself, despite having sufficient means the respondent has neglected to maintain his wife, the petitioner. Therefore, under the said circumstances, after going through the entire records, and also considering the age of the parties, the Court below, rightly dismissed the petition and this Court does not find any perversity in the order passed by the learned Judge.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1. The Judicial Magistrate No.II,
Salem.

2. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.N.Kolandaivelu, Advocate, S.R.No.71617

+1 cc to Mr.R.Nalliyappan, Advocate, S.R.No.71415

copy to: The Section Officer,
Criminal Section, High Court, Madras.

Cr1.R.C.No.722 of 2013

SPD(CO)
SSM(08/08/2019) .