

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.R.C.No. 1248 of 2011
and M.P. No. 1 of 2011

T.Balaji

.. Petitioner

Vs.

B.Nalini

.. Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the order of the learned Judicial Magistrate No.1, Mayiladuthurai in M.C. No. 24 of 2008 dated 22.03.2011.

For Petitioners : M/s. K.M.Vijayan Associates
For Respondent : No Appearance

O R D E R

This revision has been filed to set aside the order passed by the learned Judicial Magistrate No.I, Mayiladuthurai in M.C. No. 24 of 2008 dated 22.03.2011.

2. The case of the petitioner in the trial Court is that on 01.06.2005, the marriage between the petitioner and the respondent was solemnized in the residence of the petitioner. Subsequent to that, both the petitioner and the respondent lived together without any misunderstanding. After one year, the petitioner, in a drunken mood, assaulted the respondent and insulted by saying infertile. Further, he threatened her for giving consent to marry some other lady. Therefore, the respondent had lodged a complaint before the police. In the enquiry, the petitioner had given assurance that he will not commit any mistake in future. In spite of the assurance given by the petitioner, the petitioner again started to insult the respondent. Hence, the respondent had left the matrimonial home after filing the petition before the court, by saying that she is not having any means to maintain herself.

3. In the trial Court, the said averment made by the

respondent is disputed by the petitioner. He filed a counter stating that he is not having any means for paying the maintenance as fixed by the trial Court. In the trial Court after examining the petitioner and the respondent came to the conclusion that the revision petitioner is having sufficient means to pay the maintenance and ordered to pay a sum of Rs.2,000/- per month as maintenance to the respondent, against which, the petitioner approached this Court by way of this revision petition.

4. The learned counsel appearing for the revision petitioner has submitted that the petitioner is not having any permanent job, he employed in the Mahatma Gandhi National Rural Employment Guarantee Scheme, under the said scheme, he will be provided job only for 100 days in a whole year and it was further submitted that the wages received by the revision petitioner is not sufficient to maintain himself, the revision petitioner further added that the trial Court, without considering the said aspect, passed an order, in which directing the petitioner to pay a sum of Rs.2,000/- per month as maintenance. Therefore, he prays to allow this revision petition.

5. In the trial Court, the petitioner was examined as RW1 and the respondent was examined as PW1. No documents were marked on either side.

6. During the time of giving evidence, the revision petitioner had admitted that the respondent is residing with her parents. The said evidence shows that the respondent is now not living in the matrimonial home. Moreover, on going through the entire evidence given by the revision petitioner, he never stated anything about the reason for leaving the matrimonial home. Further, he has not stated anything about the steps taken for reunion with the respondent. In this aspect, when the respondent, at the time she was examined as PW1, clearly deposed that only due to the ill treatment made by the petitioner, she left the matrimonial home. Accordingly, in the trial Court, the first aspect which is necessary for getting maintenance that the respondent left the matrimonial home not voluntarily has been proved by the respondent. Secondly, on going through the evidence given by the respondent, it is clear that she is not in a position to maintain herself. Per contra, in the evidence given by the revision petitioner, he does not say anything about the earnings of the respondent, thereby, the fact that the respondent is not in a position to maintain herself, is also proved.

7. Finally, it is necessary to decide whether the revision petitioner is having sufficient means for providing maintenance. In this regard, the respondent/wife had stated in his evidence

as the revision petitioner was working as a employee in a Banian Company and obtaining the huge salary, but the revision petitioner in his evidence, has stated that he is not working in Banian Company at Tiruppur. But, contrary to the said evidence, he mentioned in the counter that he was working in Tiruppur. So, the evidence given by the respondent with regard to the employment of the petitioner is admitted by the revision petitioner. Moreover, in order to prove the fact that the petitioner was working under the scheme of Mahatma Gandhi National Rural Employment Guarantee Scheme, no documents were produced and no bank account details are furnished. Since the petitioner had not produced any documents to prove his employment, the evidence given by the respondent proves that the petitioner is residing in Tiruppur.

8. In the said circumstances, no documents were produced by either side, to prove the fact that the revision petitioner is earning much rupees. Therefore, this court decides the income of the petitioner only on considering the employment of the petitioner. It is an admitted fact that the petitioner was brought up in rural area, since, he was working as a labour in Tiruppur, the probable earnings may Rs.300/- to Rs.500/- per day. So, this Court comes to the conclusion that the revision petitioner may probably earn Rs.15,000/- per month after deducting his personal expenses, it is easy for him to pay Rs.2,000/- to the respondent as maintenance. The trail Court took the same view. Hence, the order passed by the learned Judicial Magistrate No.I, Mayiladuthurai is not suffering from any infirmities.

9. In the result, the present revision petition is dismissed. The revision petitioner is directed to pay the maintenance to the respondent as fixed by the learned Judicial Magistrate No.I, Mayiladuthurai in M.C. No.24 of 2008 dated 22.03.2011 on or before the 5th day of every English calender month. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS V)

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Sub Assistant Registrar

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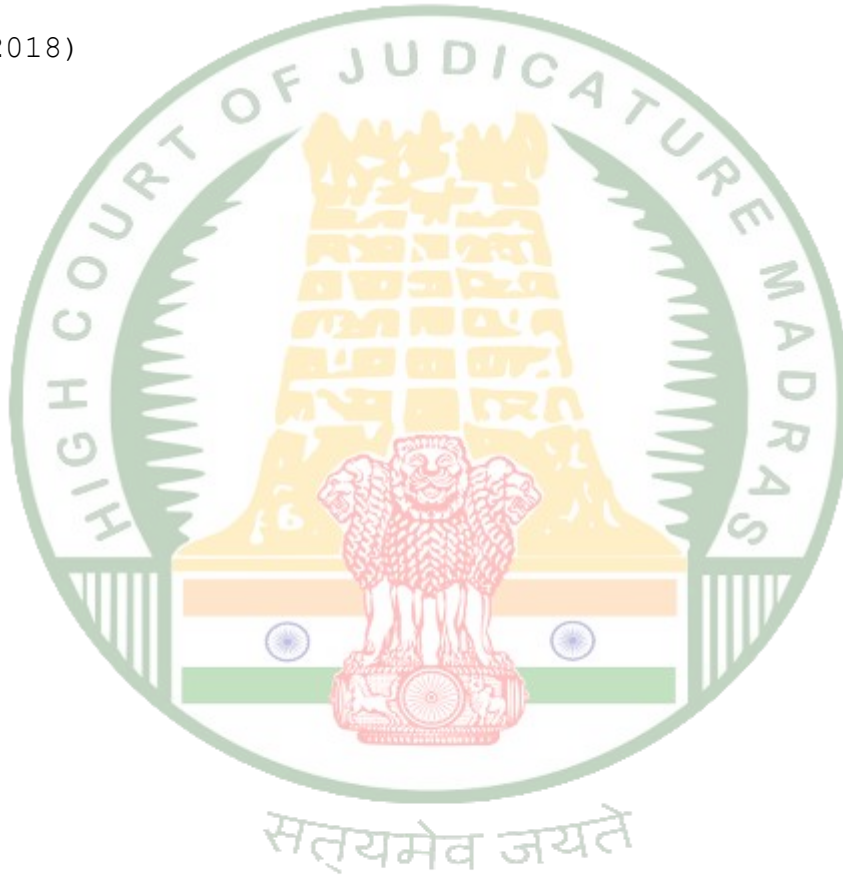
TO

1.The Judicial magistrate I,
Mayiladuthurai

+1cc to Mr.K.M.Vijayan Associates, Advocate SR.No.32148

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VGII (CO)
GN (25/06/2018)



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