

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.10 of 2014

1. Shanthi

2. Minor. Kokilavani ..Petitioners/Respondent/
Rep.by Mother/Natural Guardian Petitioners
1st Petitioner Shanthi

Vs.

Marimuthu ..Respondent/ Respondent/
Petitioners

Prayer: This Criminal Revision filed under Section 397 and 401 of Code of Criminal Procedure to set aside the order passed in C.R.P.No.83 of 2007 on the file of the learned Additional District and Session Court, F.T.C.No.3, Coimbatore dated 06.11.2007 modifying the order passed in M.C.No.15 of 2004 on the file of the learned Judicial Magistrate No.II, Pollachi, dated 14.07.2006.

For Petitioners : Mrs.P.Indumathi

For Respondent : Mr.M.N.Balakrishnan

O R D E R

This criminal revision has been filed to set aside the order dated 06.11.2007 passed by the learned Additional District and Session Court, F.T.C.No.3, Coimbatore in C.R.P.No.83 of 2007.

2 The 1st petitioner is wife and 2nd petitioner is daughter of the respondent. The 1st petitioner married the respondent on 23.11.1990. Subsequently, they separated and the 1st petitioner is living in her parent's home along with her daughter/2nd petitioner. Hence, she filed a petition in M.C.No.15 of 2004 under Section 125 of Cr.P.C., seeking maintenance, before the the Judicial Magistrate No.II, Pollachi. The learned Magistrate after trial, passed an order directing the respondent/husband to pay a sum of Rs.500/- each per month to

the petitioners towards the maintenance by an order dated 14.07.2006.

3 Against the above order, the respondent/husband filed a revision petition in C.R.P.No.83 of 2007 before the learned Additional District and Session Judge, FTC No.3. The learned Additional District Judge, after considering the entire facts and circumstances of the case, came to the conclusion that 1st petitioner had voluntarily left the matrimonial home and without any reason she living separately. Therefore, 1st petitioner/wife is not entitled for maintenance. However, with reference to 2nd petitioner/daughter, the learned Additional District Judge modified the order and directed the respondent/husband to pay a sum of Rs.1000/- as maintenance per month to the 2nd petitioner/daughter instead of Rs.500/-, by order dated 06.11.2007.

4 As against the order dated 06.11.2007, 1st petitioner/wife has preferred this Criminal Revision before this Court for enhancement of compensation.

5 The learned Counsel for the respondent has stated that both the Courts below have confirmed that after the birth of 2nd petitioner/daughter i.e. on 05.11.1993, both the petitioners are living separately. Though, the respondent/husband filed a petition in H.M.O.P. No.7 of 2005 before the learned Special Court for restitution of Conjugal Rights and the same was allowed, the 1st petitioner/wife did not take steps for reunion with the respondent/husband. Hence, the learned Additional District Judge allowed the petition against the 1st petitioner/wife and with reference to 2nd petitioner/daughter, issued a modified order.

6 I have perused the records and a perusal of order and records. Though the respondent had filed a petition for restitution of conjugal rights, the trial Court has clearly stated that even though he got an order for restitution of conjugal rights, he did not take any steps to bring back the petitioner to the matrimonial home. He has also failed to prove that the petitioner are having sufficient source of means to maintain themselves. Therefore, the learned Magistrate allowed maintenance for both the petitioners.

7 The Additional District Judge has given reason for dismissing maintenance with neglect to the first petitioner herein that she has voluntarily left the matrimonial home without any reason and she is living separately. Though the respondent has got a favourable order in the O.P. filed for restitution of conjugal rights, he did not taken effective steps for reunion with the first petitioner.

8 paternity of the child is not in dispute. Now, the spouse are living separately. The child is under the care and custody of the first petitioner.

9 The order of the learned Additional District Judge rejecting maintenance to the first petitioner, has no basis. She has not remarried. Though the respondent has got an order for restitution of conjugal rights, he has not taken any positive steps to join with his wife and child. The maintenance amount of Rs.1000/- is very low in the present day economic situation. Therefore, this Court is of the considered view that the same shall be extend to Rs.1000/- each, to the petitioner, meaning thereby, the respondent shall pay a sum of Rs.2000/- as total maintenance to the petitioner, from the date of filing the petition filed for maintenance. The arrears amount shall be paid within a period of three months from the date of receipt of a copy of this order. The respondent shall continue to pay the maintenance at Rs.2000/- per month on or before 5th of every month.

10 With the above directions, the Criminal Revision is dismissed.

Sd/-

Assistant Registrar (insp.cell)

//True Copy//

Sub Assistant Registrar

ksa-2/rli

To

1.The Additional District and Session Court, F.T.C.No.3, Coimbatore.

2. The Judicial Magistrate No-II, Pollachi.

+1cc to Mrs.P.Indhumathi, Advocate, SR. No. 74022

+1cc to M/s.M.N.Balakrishnan, Advocate, SR. No. 74057

Cr1.R.C.No.10 of 2014

GJ(CO)

RMP(04/07/2019)