

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.10.2018

CORAM
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.337 of 2017 and
Crl.M.P.No.3692 of 2017

R.Raman

... Petitioner

Vs.

S.A.Thangamani

... Respondent

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to set aside the order dated 31.03.2016 in M.C.No.77 of 2010 on the file of the Additional Principal Judge, (Additional Family Court), Coimbatore and allow the above criminal revision petition.

For Petitioner : Mr.C.R.Prasanan

For Respondent : Mr.M.U.Prasanna for
M/s.Sai Bharath & Ilan

O R D E R

This criminal revision has been filed seeking to set aside the order dated 31.03.2016 in M.C.No.77 of 2010 on the file of the Additional Principal Judge, (Additional Family Court), Coimbatore.

2.The undisputed facts of the petitioner and the respondent are as follows:

The marriage between the petitioner and the respondent was solemnized on 01.02.1998, at Dindugal, as per the Hindu rites and customs. After the marriage, they lived together at Vedachandur. Out of their wedlock, a male child was born on 05.01.1999. The petitioner is a Government Servant working as Junior Assistant in the Agricultural Department as on date. The respondent/wife is M.Sc., B.Ed., graduate, however, she did not work anywhere. Thereafter, there was an allegation against the petitioner by the respondent that he had illegal relationship with one Maragadham, who is the sister-in-law of the elder sister of the respondent. In order to discharge the debts of the petitioner, he demanded the respondent to settle the debts and on the said ground, there was difference of opinion between them, in which, the respondent separated from the matrimonial home. Initially, she went to her brother's house and the

respondent unable to maintain herself, hence she filed maintenance petition under Section 125 of the Code of Criminal Procedure, claiming Rs.10,000/- p.m. During the trial, the respondent was examined as PW1 and marked Exs.P1 to P4 and the petitioner was examined as RW1 and marked Exs.R1 to R3.

3.After elaborate discussions, though the respondent has claiming a sum of Rs.10,000/- as monthly maintenance, the learned Additional Principal Family Judge, Coimbatore, passed the order, dated 31.03.2016 made in M.C.No.77 of 2010, directed the petitioner to pay a sum of Rs.5,000/- p.m. as maintenance to the respondent from the date of petition i.e. 01.04.2010 and further directed that the maintenance amount is payable for every month on or before 7th of every succeeding English Calendar month. Aggrieved by the same, the present revision has been filed.

4.The learned counsel appearing for the petitioner would submit that the petitioner is working as Junior Assistant in the Agricultural Department at Race Course at Coimbatore and after deduction, the net salary of the petitioner is Rs.13,000/- p.m, in which, he has to maintain his mother and son, who is studying in the College and maintaining himself and therefore, he is not in a position to pay huge maintenance amount of Rs.5,000/- to the respondent. However, as per the condition imposed by this Court dated 09.03.2017, the petitioner continued to pay Rs.2,500/- p.m. as interim maintenance. Therefore, he prays for allowing the revision by reducing the maintenance amount of Rs.5,000/- to Rs.3,000/- p.m.

5.Per contra, the learned counsel for the respondent/wife would submit that though the petitioner deserted the respondent in the year 2003, she went to her brother's house and started to live under the control of his brother. Even thereafter, the respondent was not allowed to see her child and thereby, the respondent filed GWOP No.704 of 2010 seeking custody of the male child and the said GWOP was dismissed. Since there was dispute between the respondent's brother and his wife, she stayed in her elder sister's house and since her elder sister not interested to look after the respondent, she was forced to file the maintenance petition in the year 2010. After the trial, the lower Court considered sympathetically and awarded a sum of Rs.5,000/- as maintenance, which is not an exorbitant one and prays to dismiss the present revision.

6.Considering the facts and circumstance of the case, though the petitioner claimed a sum of Rs.10,000/- as monthly maintenance, the lower Court awarded a sum of Rs.5,000/- p.m. The undisputed fact that the petitioner is taking care of the male child and also his mother and maintaining for himself, though he received only a sum of Rs.13,000/- p.m. as salary

after deductions, however, no records have been produced before the lower Court or this Court to prove his net salary is Rs.13,000/- p.m. In the absence of any proof for his net salary, this Court of the considered view that the award of Rs.5,000/- as maintenance has to be reduced to some extent and accordingly, it is fixed as Rs.4,600/- p.m. The petitioner is directed to pay a sum of Rs.4,600/- p.m. to the respondent as regular maintenance, with immediate effect, on or before 7th of every English Calendar month.

7. So far as the difference in arrears of maintenance is concerned, the interim maintenance to the tune of 50% of the arrears already deposited by him and in turn withdrawn by the respondent works out to Rs.2500/- per month which shall be deducted from the modified maintenance of Rs.4600/- and the balance being Rs.2100/- per month, it comes around Rupees two lakh and odd for a period of more than eight years from the date of decree and it shall be calculated and paid by him to the respondent in 10 equal instalments.

8. In view of all the above, this Criminal Revision Petition is disposed of with the above terms. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Additional Principal Judge,
(Additional Family Court),
Coimbatore.

2. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.C.R.Prasanan, Advocate, S.R.No.70364

+1cc to Mr.Sai Bharath Ilan, Advocate, S.R.No.70664

Cr1.R.C.No.337 of 2017 and
Cr1.M.P.No.3692 of 2017

RSK(CO)

rrs 02/11/2018