

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2018

DELIVERED ON : 20.11.2018

CORAM

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

Crl.R.C.Nos.783 and 1139 of 2017 and
Crl.M.P.No.7172 of 2017 and
Crl.M.P.No.171 of 2018

Mukesh Jain

... Petitioner
in Crl.R.C.No.783 of 2017
and respondent in
Crl.R.C.No.1139 of 2017

vs.

Kaushalya

... Respondent
in Crl.R.C.No.783 of 2017
and petitioner in
Crl.R.C.No.1139 of 2017

Criminal Revision Cases filed under sections 397 read with
Section 401 of the Criminal Procedure Code to set aside the
judgment dated 29.4.2017 passed in M.C.No.413 of 2007 by the I
Additional Family Court, Chennai.

For petitioner : Mr.R.Singaravelan
in Crl.R.C.No. Senior Counsel
783 of 2017 for M/s.S.P.Arthi
and respondent in
Crl.R.C.No.1139 of 2017

For respondent : Mr.Sandeep S.Shah
in Crl.R.C.No. and Mr.N.Seshadri
783 of 2017
and petitioner in
Crl.R.C.No.1139/2016

COMMON ORDER

The petitioner in Crl.R.C.No.783 of 2017 is the husband and
the petitioner in Crl.R.C.No.1139 of 2017 is the wife. The
spouses by way of these revisions are challenging the judgment
dated 29.4.2017 passed in M.C.No.413 of 2007 by the learned I
Additional Family Court, Chennai.

2. The parties are referred to as per their rank before the learned I Additional Principal Judge, Family Court, Chennai, i.e., the husband is referred to as "the respondent" and the wife is referred to as "the petitioner".

3. The facts as could be culled out from the order passed by the Court below are as under: The marriage between the petitioner/wife and the respondent/husband took place on 17.05.1995 at Rajasthan as per Hindu rites and customs. It is stated that at the time of marriage, the petitioner's father gave 700 grams of gold jewels, 5 Kg of silver vessels, wrist watch, luxurious items and household articles for the petitioner as stridhana. It is also stated that the petitioner's father spent about Rs.7 lakhs towards marriage. It was alleged that the respondent husband's family members informed her that they are not satisfied with the stridhana property. From the wedlock, no child was born to them. It is the allegation of the petitioner/wife that she was treated as a servant by the respondent husband and his family members and was beaten and abused using filthy language for getting further dowry and was sent to her parents house.

4. It was the further case of the petitioner/wife before the Court below that her neighbours knowing well about the ill-treatment she is being subjected to, lodged a police complaint and after police enquiry with the family members, it is stated that a separate residence was set up for the couple to live and even for that residence, it is stated that the petitioner's father provided fan, cot, fridge and other necessary articles. The trouble, it is stated, had not ended and the respondent/husband continued to eat outside and not the food made by the petitioner/wife and on questioning, she was beaten.

5. In view of such behaviour of the respondent husband, it is stated that the petitioner/wife went to her matrimonial house and as a separate house was set up for them, the respondent's elder brother gave a complaint to the police to the effect that the said couple have no right to stay in their house. However, it is stated that after police interference, the couple continued to stay in the matrimonial house. The petitioner/ wife alleges that the treatment was worse, viz., she was subjected to more cruelty. The petitioner /wife lodged a police complaint against the respondent and his family members for dowry harassment and cruel treatment in C.C.No.118 of 2003 before the learned Assistant Judicial Magistrate II, Jodhpur.

6. It is the case of the petitioner/ wife that the gold jewels, silver articles and stridhana properties given at the time of marriage are still with the respondent/ husband and he is also doing business and earning Rs.8 lakhs per month, apart

from getting his share of Rs.1 lakh from his parents house, but the respondent/ husband has neglected to maintain the petitioner wife, who has no source of income to maintain herself.

7. In this premise, the petitioner /wife has filed the petition seeking maintenance claim under Section 125 of the Criminal Procedure Code as against the respondent/ husband seeking maintenance of Rs.30,000/- per month.

8. The above said allegations were refuted by the respondent husband stating that the petitioner/ wife behaved cruelly with him and his family members and always used to be isolated, talking ill about them. It is his specific plea before the Court below that the petitioner/wife has not intention to stay with him and his family members and only wanted to harass them. He averred that the petitioner/ wife deserted him on 1.9.2003 and at that time, she took all the personal belongings like jewellery, furniture, dresses, etc. with her. He denied his financial status as put forth by the petitioner/ wife and stated that all the shops are run by his elder brother and they are taking care of his needs and inasmuch as he was forced to come out of the house, he has to make his own living and he cannot demand money from his brothers, who have their own shops and earn income from those shops. He, thus, prayed for dismissal of the maintenance petition.

9. The trial Court by judgment dated 29.04.2017 passed in M.C.No.413 of 2007 allowed the petition and directed the respondent/ husband to pay Rs.20,000/- per month as maintenance to the petitioner/ wife from the date of petition, viz., 22.08.2007. The respondent husband was directed to pay the maintenance amount on or before 5th of every month and was further directed to pay the arrears of maintenance in six equal monthly installments.

10. Assailing the above said judgment, both the petitioner/ wife and the respondent/ husband have filed criminal revisions. While the petitioner wife sought enhancement of maintenance amount from Rs.20,000/- to Rs.1,00,000/- per month, the respondent/ husband sought setting aside of the order passed by the Court below.

11. The learned Senior Counsel appearing for the respondent/ husband submitted as under:

- (a) inasmuch as the petitioner/ wife has deserted the respondent /husband, she is not entitled to maintenance and the finding of the Civil Court, which granted divorce, is binding on the Criminal Courts;
- (b) the Court below having held that the petitioner /wife has failed to prove the income of the respondent/

husband, was not justified in awarding maintenance of Rs.20,000/- per month;

- (c) the respondent/ husband pursuant to the order passed by the Family Court granting divorce, re-married and is blessed with a child and the Court below did not considered the number of dependents of the petitioner before awarding maintenance;
- (d) there is no iota of evidence adduced by the petitioner/ wife to fortify her plea that the respondent husband is part of a Hindu Undivided Family and he is entitled to share in the family income, but despite the same, the Court below had granted an exorbitant sum towards maintenance;
- (e) the petitioner/ wife filed repeated false cases against the respondent /husband and the cases registered under Section 498A of the Indian Penal Code and the Domestic Violence Act were ruled in favour of the respondent/ husband and the petitioner /wife is a shareholder of various immovable properties and has a regular source of rental income and does not deserve any maintenance from the respondent /husband.

12. Per contra, the learned counsel appearing on behalf of the petitioner /wife contended as under:

- (a) inasmuch as the brother of the respondent /husband and his wife deposed in the divorce proceeding under oath that the respondent/ husband is running a Hindu Undivided Family business, the finding of the trial Court that the petitioner/ wife has not proved the income of the respondent /husband is incorrect and the same warrants interference;
- (b) though the petitioner/ wife produced evidence to the effect that the respondent/ husband has got income of not less than Rs.10 lakhs per month, and the same was also not disputed by the respondent/ husband, the trial Court erroneously did not give due credence to them;
- (c) the Court below had fixed maintenance at Rs.20,000/-, even though she claimed monthly maintenance of Rs.30,000/- without assigning any reason whatsoever and when she claimed such amount in the year 2007, the Court below ought to have considered increasing the same while allowing the petition in the year 2017 to at least Rs.2 lakhs per month, considering the cost of living, rather than decreasing the amount claimed.

13. I heard Mr.R.Singaravelan, learned Senior Counsel for M/s.S.P.Arthi, the learned counsel for the petitioner in CrI.R.C.No.783 of 2017 and respondent in CrI.R.C.No.1139 of 2017 and Mr.Mr.Sandeep S.Shah and Mr.N.Seshadri, learned counsel for

the respondent in CrI.R.C.No.783 of 2017 and petitioner in CrI.R.C.No.1139 of 2017 and perused the documents available on record.

14. It is not in dispute that Section 125 of the Criminal Procedure Code deals with awarding of maintenance for wife, children or parents. As per the Section, if any person having sufficient means neglects or refuses to maintain his wife, who is unable to maintain herself, such wife is entitled to get maintenance from her husband. The Court below, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife. Similarly, neglected children or parents are also entitled to claim maintenance. In the explanation, it has been made clear that the term "wife" includes a woman who has been divorced and not remarried any other person. In the case on hand, admittedly, the petitioner wife is not married after the divorce.

15. As contemplated under Section 125 of Cr.P.C., a divorced wife is also construed under the purview of wife, entitled to claim maintenance, if her divorced husband having sufficient means, neglects or refuses to maintain her and she has not remarried. It is not the case of the respondent /husband that the petitioner/ wife has remarried any person subsequent to the divorce. Therefore, the Court has to consider whether the respondent/ husband despite having sufficient means had neglected or refused to maintain the petitioner, who is divorced wife of the respondent.

16. The Hon'ble Supreme Court in Rohtash Singh v. Ramendri, (2000) 3 SCC 180, held as under:

"10. Claim for maintenance under the first part of Section 125 CrPC is based on the subsistence of marriage while claim for maintenance of a divorced wife is based on the foundation provided by Explanation (b) to sub-section (1) of Section 125 CrPC. If the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to maintenance allowance. The Calcutta High Court had an occasion to consider an identical situation where the husband had obtained divorce on the ground of desertion by the wife but she was held entitled to maintenance allowance as a divorced wife under Section 125 CrPC and the fact that she had deserted her husband and on that basis a decree for divorce was passed against her was not treated as a bar to her claim for maintenance as a divorced wife. (See: Sukumar Dhibar v. Anjali Dasi [1983 Cri LJ 36 (Cal)] .) The Allahabad High Court also, in the instant case, has taken a similar

view. We approve these decisions as they represent the correct legal position.

11. Learned counsel for the petitioner then submitted that once a decree for divorce was passed against the respondent and marital relations between the petitioner and the respondent came to an end, the mutual rights, duties and obligations should also come to an end. He pleaded that in this situation, the obligation of the petitioner to maintain a woman with whom all relations came to an end should also be treated to have come to an end. This plea, as we have already indicated above, cannot be accepted as a woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was once her husband continues to be under a statutory duty and obligation to provide maintenance to her."

(emphasis supplied)

17. In view of the law enunciated above, it does not lie in the mouth of the respondent/ husband to state that he is not liable to pay maintenance to the petitioner /wife, whom he had divorced.

18. Coming to the quantum of maintenance awarded by the Court below, it is apposite to refer to the manner in which the Court below fixed the maintenance amount:

"7. Petitioner has stated in her petition, proof affidavits and arguments that the respondent is running Hindu undivided family business, there is no proof to substantiate the said contention. Further there is no proof that the respondent is employed in Babulal's firm drawing salary of Rs.7,000/-. The respondent submits that since the wife deserted from the matrimonial home and divorced, she is not entitled for the maintenance. The petitioner submits that the petitioner left the home and the respondent is made aloof but the law is very clear that even a divorced wife is entitled for maintenance, if it is proved that she is unable to maintain herself. In this case, there is no evidence to show that the wife is having income to support herself so that it is proved that the wife

is unable to maintain herself. The petitioner fails to show that what is the actual income earned by the respondent. The petitioner has not taken steps to call for the income tax returns from the income tax department to prove that the respondent is doing the Hindu Undivided family business and he is having 1/5th share in the said business. The petitioner's counsel argues that the respondent is running HUF in Jodhpur, Rajasthan and at Thenali in Andhra Pradesh, but fails to prove the same through documents.

....

9. Respondent cannot escape from his responsibility to maintain the petitioner. Hence, it is concluded that in the interest of justice this Court is of the opinion that awarding Rs.20,000/- per month as maintenance is just and reasonable. The point is answered accordingly.”
(emphasis supplied)

19. It is the specific case of the petitioner that he had re-married and has a child born from the wedlock and persons depending on him have increased and he is not having sufficient source of income to pay the monthly maintenance of Rs.20,000/-. He strongly refuted the plea of the petitioner/ wife that he is receiving money from the Hindu Undivided Family share. According to the respondent/ husband, he is labourer and he is drawing a meagre salary of Rs.8,000/- per month, whereas the petitioner/ wife has substantial source of income in the form of rental income, etc., which fact has not been considered by the Court below.

20. On the other hand, the petitioner wife states that she holds evidence to show that the respondent husband earns around Rs.10 lakhs per month and that she is entitled to enhanced amount of compensation due to cost escalation and the said factor was also not considered by the Court below.

21. The Court below, while arriving at the quantum of maintenance, in my considered opinion, did not give due credence to the financial status of the parties as they claimed. The Court below while holding that the petitioner/ wife had failed to show any evidence regarding the income of the respondent husband, held that the respondent/ husband cannot escape from his responsibility and awarded Rs.20,000/- per month. There is, however, no basis for arriving at such quantum.

22. In such view of the matter, these criminal revision petitions are disposed of in the following terms:

i. The judgment dated 29.4.2017 passed in M.C.No.413

of 2007 by the I Additional Family Court, Chennai, is set aside and the matter is remanded to the Court below for fresh consideration;

- ii. The Court below is directed to take up the maintenance case afresh by giving an opportunity to both sides to adduce further evidence, if any, within four weeks. If the parties fail to adduce further evidence within the said period, it shall be presumed that they have no evidence to be let in;
- iii. On receipt of such evidence, if any, the Court below shall analyze the evidence already on record as well as the fresh evidence adduced, as directed above, and pass appropriate orders within four weeks therefrom; and
- iv. The parties are directed to extend their fullest cooperation for speedy disposal of the matter.
- v. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

vs

To

The I Additional Principal Judge,
I Additional Family Court,
Chennai.

+3cc to Mr.N.Seshadri, Advocate, S.R.No. 78968

+2cc to Ms.S.P.Arthi, Advocate, S.R.No. 79420 & 79421 (23/11/2018)

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CrI.R.C.Nos.783 and 1139 of 2017 and
CrI.M.P.No.7172 of 2017 and
CrI.M.P.No.171 of 2018

RR (CO)
GN (20/11/2018)