

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C.No.1296 of 2018

Jayachandran @ John Petitioner

vs.

Amalorpava @ Amala Respondent

Petition filed under Section 397 r/w 401 of Cr.P.C. against the order dated 24.07.2018, passed by the 3rd Additional Sessions Judge, Salem in C.A.No.9 of 2018 partly allowing the judgment dated 08.06.2017, passed in Crl.M.P.No.194 of 2017 in DVOP No.57 of 2016, by the Judicial Magistrate, Additional Mahila Court, Salem.

For Petitioner : Mr.Jayasree Baskar

For Respondent : Mr.S.Manoharan

O R D E R

Challenging the judgement dated 24.07.2018, passed by the 3rd Additional Sessions Judge, Salem in Crl.A.No.9 of 2018, the petitioner/husband is before this Court with this criminal revision case.

2.The respondent herein (wife) filed Crl.M.P.No.194 of 2017 in D.V.O.P.No.57 of 2016, before the Judicial Magistrate, Additional Mahalir Needhimandram, Salem, seeking maintenance on the following grounds:

The respondent herein and the revision petitioner got married on 15.02.2015. While so, the husband created trouble in the matrimonial life, which caused rift in the relationship. Admittedly, she was constrained to live in her parents house and file the petition seeking interim maintenance of

Rs.10,000/- and also for return of 'Sreedhana articles'. The revision petitioner herein resisted the same.

3.Ultimately, the learned Magistrate awarded maintenance in a sum of Rs.5000/- per month in favour of the wife. Being aggrieved by the same, the revision petitioner/husband filed appeal before the III Additional Sessions Court, Salem. The lower appellate Court, reduced the maintenance amount from Rs.5000/- to Rs.4000/-. The appellate Court has also awarded a sum of Rs.2,000/- towards travelling expenses. Not satisfied with the said judgement of the lower appellate Court, the husband is before this Court with this revision case, raising various grounds, the crux of them would be to the effect that without proper appreciation of facts, the appellate Court simply awarded maintenance, even though the husband is without job and the respondent/wife is working as Nurse and is earning a sum of Rs.25,000/- per month. On the side of the wife, the said fact has not been denied and no document also has been filed refusing the same, which was not taken note of by the lower appellate Court. As such, the revision petitioner prays for setting aside the judgement of the lower appellate Court and for dismissal of the appeal filed by the wife.

4.Heard both sides.

5.The point for consideration is as to whether there is any infirmity or perversity in the judgement passed by the lower appellate Court and whether the same has been passed without properly appreciating the facts of the case.

6.The learned counsel for the revision petitioner, placing reliance on the grounds of revision, would develop his argument to the effect that the respondent herein-the wife of the petitioner being a Nurse, having sufficient financial resources and as such, she is not entitled to get maintenance from the husband. He would also contend that it is the wife, who neglected to have cohabitation with the revision petitioner and as such, she has not made out a case before the Courts below that the husband neglected to maintain her and therefore, he cannot be mulcted with the liability to pay monthly maintenance. It is because of the complaint made by the wife with the officials of the office in which the revision petitioner was working, the husband lost his job and now he is suffering without job, is the contention raised by the learned counsel for the petitioner. The husband has not perpetrated any cruelty on the wife and she on her own accord had chosen to stay away from the matrimonial home and live in her father's house. Finally it is contended by the learned counsel for the petitioner that the

maintenance awarded is excessive and the revision petitioner is not in a position to pay such an amount to the wife.

7. Whereas, the learned counsel for the wife, by way of refuting the arguments put forth on the side of the revision petitioner, submitted that the respondent, being a wife, behaved dutifully towards the husband, but it is only due to the cruelties, meted out by her in the matrimonial home, as set out in the petition, she was compelled to live separately. The Courts below considering all these facts held that the husband is bound to maintain the wife and accordingly passed the award, warranting no interference by this Court.

8. A mere perusal of the judgement of the lower Appellate Court would show that the appellate Court has considered the entire facts and circumstances of the case and held that there is no justification on the part of the husband in refusing to maintain the wife.

9. It is well settled that in petitions seeking interim maintenance, the Courts are not expected to delve deep into each and every aspect of the matrimonial dispute and dilate thereon. Only as per the settled legal proposition, the Courts below held that the wife is entitled to interim maintenance. On a careful perusal of the contentions put forth on both sides, this Court is of the view that there is blast and counter blast on both sides regarding matrimonial dispute, with which this Court is not concerned and the same would be decided in the appropriate proceedings. Even assuming that the plea of the husband that it is because of the attitude of the wife, a rift has arisen in the matrimonial relationship, in my opinion, that cannot be a ground for the husband to desert his wife and refuse to provide maintenance to her. As such, I am of the considered opinion that the approach of the Courts below is not perverse and there is no illegal exercise of jurisdiction on the part of the Courts below in awarding maintenance. Therefore, I could see no merit in the contention of the revision petitioner.

10. The lower appellate Court, after taking into consideration the rival contentions raised on both sides, awarded a sum of Rs.4000/- per month towards interim maintenance. In paragraph No.7 of the judgement, it is observed by the lower appellate Court that though it is contended on the side of the husband that the wife is working as a Nurse and is earning a sum of Rs.25,000/- per month and a similar contention has been raised on the side of the wife that the husband is working as a Branch Manager in a Cargo company and is earning a sum of Rs.40,000/- per month, no document was produced on either side to prove the same. The lower Appellate Court further observed that though it is contended on the side of the husband

that he lost his job, no document was produced to prove the said fact.

11.A bare perusal of the records would go to show that the wife is in a cash strapped situation and at this present day cost of living, it is obvious that a lady would not be able to live without having minimum required amount and she would be a burden to her parents. In such a case, it is the husband, who should provide maintenance to his wife. Having this principle in mind, the Courts below correctly ordered maintenance, that too, in my opinion, a meagre maintenance, which warrants no interference by this Court.

12.The lower Appellate Court, taking into consideration the legal proposition that the husband cannot wriggle out of his liability to pay maintenance to his wife and also the contention raised on the side of the husband that he lost his job and now he is suffering without any job, reduced the maintenance of Rs.5000/- awarded by the learned Magistrate and awarded only a sum of Rs.4000/- per month towards interim maintenance. The said amount, in my opinion, is perfectly justified and no interference is required. Accordingly, this criminal revision case is dismissed.

13.The learned counsel for the respondent, prays for a direction to the revision petitioner to pay the accrued arrears immediately to the respondent.

14.The prayer now made by the learned counsel for the respondent is a reasonable one and therefore, the revision petitioner is directed to pay the arrears of maintenance within a period of four weeks from the date of receipt of copy of this order and he is also directed to pay the monthly maintenance to the respondent, on or before 5th of every English calendar month, without any default.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Msk

To

1.The 3rd Additional Sessions Judge,
Salem.

2.The Judicial Magistrate,
Additional Mahila Court, Salem.

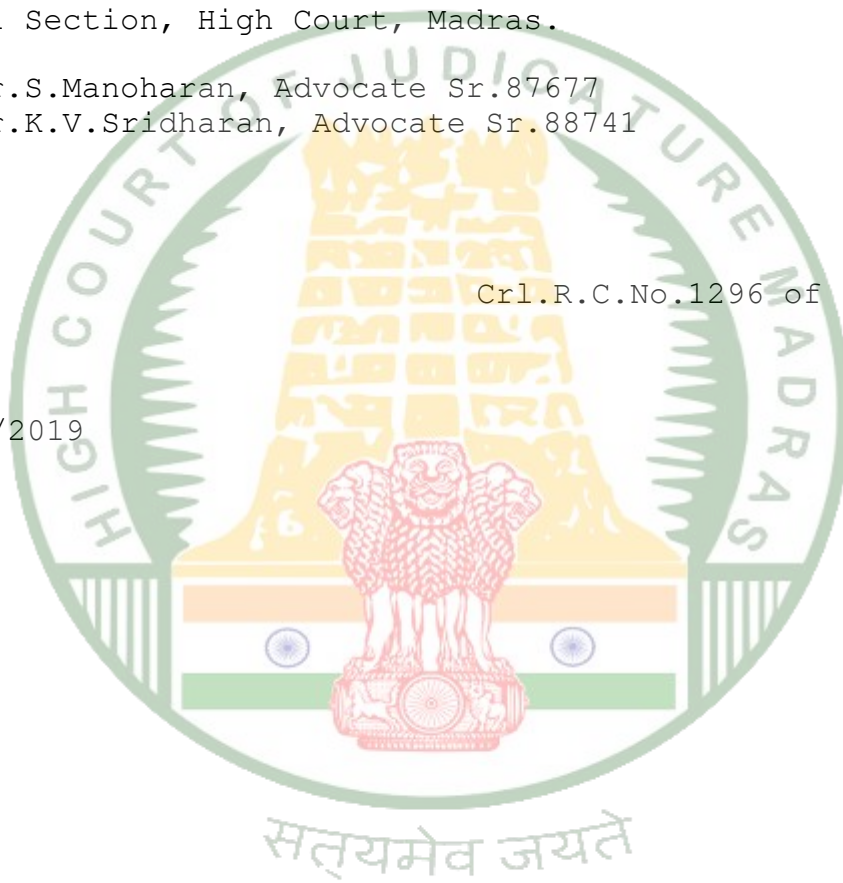
3.The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.S.Manoharan, Advocate Sr.87677

+1cc to Mr.K.V.Sridharan, Advocate Sr.88741

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