



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2018

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THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.(MD) No.69 of 2018

and

Crl.M.P.(MD)No.799 and 1267 of 2018

C.R.Ganesh Babu

...Revision Petitioner /
Appellant / Accused

Vs.

Shanmugapriya

...Respondent/ Respondent/Complainant

PRAYER:Criminal Revision Petition - filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the appellate Court records and set-aside the Judgment and order passed by the Principal District and Sessions Court - Theni, dated 27.11.2017 in C.A.No.28 of 2016, by confirming the judgment and order made in M.C.No.8 of 2012 by the District Munsif Cum Judicial Magistrate, Bodinayakanur, dated 15.03.2016.

For Petitioner : Mr.V.Lakshmanan

For Respondent : Mr.K.P.S.Palanivel Rajan

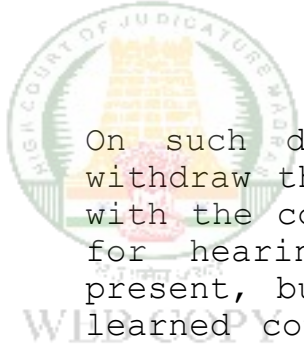
O R D E R

Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

2. Today, this case is listed under the caption 'for dismissal', since there was no representation for the petitioner, when the matter was taken up for hearing on 23.08.2018. When the matter is called, today, the learned counsel for the petitioner is present, but not ready.

3.Perusal of the records indicates that the revision is arising out of an award passed by the District Munsif cum Judicial Magistrate, Bodinayakanur in M.C.No.8 of 2012. Aggrieved by the order of maintenance of a sum of Rs.10,000/- per month payable to the respondent / wife, the revision petition has been filed.

4.On 06.02.2018, this Court issued notice of motion returnable by 05.03.2018 on condition that the petitioner / husband shall deposit a sum of Rs.2,50,000/- on or before 05.03.2018 and report compliance before this Court on 06.03.2018.



On such deposit, the respondent / wife will be entitled to withdraw the same. But the revision petitioner failed to comply with the condition. On 30.07.2018, when the matter was taken up for hearing, the learned counsel for the petitioner though present, but not ready for arguments. It was represented by the learned counsel for the respondent that the petitioner has not complied the direction of this Court passed on 06.02.2018. Since the monthly maintenance as directed by this Court was not complied, this Court has cancelled the said interim order, recording the petitioner's unwillingness to argue the matter even after giving sufficient opportunities. This Court has adjourned the matter to 09.08.2018. But the case was not listed on 09.08.2018 and listed on 23.08.2018. On that date, there was no representation for the petitioner. The learned counsel for the respondent was present and submitted that the revision petitioner has not complied the order of this Court passed on 06.02.2018. The respondent / wife is unable to maintain herself. In the above circumstances, this Court post the matter under the caption 'for dismissal', today i.e., 24.08.2018.

5.As pointed out earlier, the learned counsel appearing for the petitioner, though present today, was not ready to argue this revision. Hence, this Court has no way, except to peruse the records and pass the following order:-

(i)The respondent / wife viz., Shanmugapriya and the petitioner / husband viz., Ganesh Babu got married on 26.05.1993. Substantial dowry was given to the revision petitioner and it is listed along with the petition filed for maintenance. The matrimonial home was set up at Usilampatti Town. It was a joint family. The respondent realized that the petitioner / husband is impotent and unfit for matrimonial life. Thereafter, the couple have taken medical assistance for reproduction. Though the respondent got conceived, the foetus got aborted after four months. The seventh and eight respondents in M.C.No.8 of 2012, who are the close relatives of the in-laws of the respondent / wife, misbehaved with her on sexual overture and thereafter there was ill-treatment, harassment and abuse.

(ii)In the said circumstances, they have adopted a child on 11.08.2002. Later, the husband developed dislike towards the child and tried to abandon the child. At the behest of his family members, the petitioner / husband has deserted the respondent and their adopted child during the month of February, 2009. Since the petitioner / husband is running a hotel, grocery shop and petrol bunk, through which several lakhs of money per month he earns, monthly maintenance of Rs.35,000/- has been claimed under Section 12 of the Domestic Violence Act, 2005.

(iii)All the allegations were denied by the petitioner, including the allegation of impotency, desertion and cruelty.



Further, adultery with one Sethuraman was also alleged by the petitioner / husband. It is also contended by the petitioner / husband that he has no independent income, whereas his wife / respondent have sufficient property at Bodinayakanur and she is leading very luxurious life.

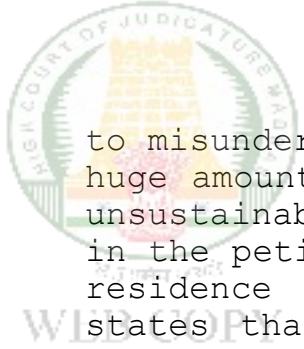
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(iv) The trial Court after examining the witnesses on behalf of both sides, as well as the documents relied by the parties, has held that the objection regarding territorial jurisdiction to entertain the petition is unsustainable, in view of the fact that substantial cause of action including permanent residence of the petitioner fall within the jurisdiction of the Court. Relying upon the evidence of P.W.4, Senthil Kumar and other materials, the desertion of the wife has been held to be proved. Since the petitioner / husband initiated divorce proceedings, his averment that he is ready to live with his wife was disbelieved by the Court below. While the petitioner / husband has relied upon Ex.R1, the joint Patta of agricultural land, in which the name of his wife is also shown as one of the joint owner. The trial Court has held that this will not be sufficient to held that the wife has means to maintain herself, whereas the petitioner / husband has admitted in his deposition that his family is involved in running hotel, grocery shop, petrol bunk and also whole sale kerosene and dealership. He has admitted that he has own car.

(v) In the above circumstances, considering the evidence pertaining to the birth register, School Certificate of Pathri Chithambaranath, foster child of the petitioner and the respondent, the trial Court has held that the foster son is also entitled for maintenance. Accordingly, the trial Court has fixed a sum of Rs.10,000/- as monthly maintenance to the respondent / wife, a sum of Rs.8,000/- for residential rent and a sum of Rs.5,000/- to the son Pathri Chithambaranath and also a sum of Rs.5,00,000/- as compensation for her mental torture. The Court has rejected the claim of the dowry articles by the respondent / wife.

(vi) Aggrieved over the order of the trial Court, the husband / respondent has preferred an appeal before the Principal District and Sessions Court, Theni in C.A.No.28 of 2016. On re-appreciation, the Appellate Court, while confirming the order of the trial Court has also created charge over the property allotted to the petitioner / husband in the partition deed shown under Schedule 'E', till the payment of compensation of Rs.5,00,000/-.

6. The present criminal revision petition has been filed on the ground that the judgments cited by the petitioner / husband regarding adoption and maintenance of a person were not legally adopted. The compensation of Rs.5,00,000/- has been awarded, due



to misunderstanding of the meaning contended in Ex.P3 and P4. The huge amount of compensation have no proper legal reasoning and is unsustainable. Also the territorial jurisdiction has also arisen in the petition contending that Bodinayakanur is not the permanent residence of the respondent / wife. The petitioner / husband states that in the deposition of the respondent / wife, it is stated that admittedly Pathri Chithambaranath was not a illegally adopted child of the petitioner and the respondent. Further, it is contended that awarding interest for the compensation and arrears is beyond the scope of Domestic Violence Act, 2005.

7.As far as, the jurisdiction of the Court is concerned the petitioner admittedly, residing at Bodinayakanur. Some of the property, upon which, now the charge is created for payment of compensation also is in Bodinayakanur. The place of cause of action explained in the petition is admitted by both the parties and the territorial jurisdiction is District Munsif cum Judicial Magistrate, Bodinayakanur. Therefore, pleas raised regarding territorial jurisdiction is unsustainable. The trial Court as well as the appellate Court on facts had perused the documents in respect of properties held by the petitioner / husband, the communication between the parties vis-a-vis for amicable settlement of the dispute. The school certificate of Pathri Chithambaranath shows that he has right for compensation from the petitioner / respondent and he is liable to maintain his wife and foster son. As far as, the mental agony is concerned, the compensation amount of Rs.5,00,000/- cannot be construed as excess amount. In the light of the fact that the petitioner / husband has not only harassed, tortured and abused his wife after having abandoned the child under his foster care. He has also made very serious allegations against her, about her fidelity. In the said circumstances, the compensation amount of Rs.5,00,000/- awarded by the trial Court and the appellate Court could not be considered as excessive compensation.

8.In the light of the above discussion, this Court finds no merit in the case. This Criminal Revision Petition is dismissed, accordingly. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS-IV)



To

1.The Principal District and Sessions Judge,
Theni.

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2.District Munsif Cum Judicial Magistrate,
Bodinayakanur.

+1 CC To MR.K.P.S.PALANIVEL RAJAN, Advocate SR. NO.79983

+1 CC To MR.V.LAKSHMANAN, Advocate SR. NO. 79977

Cr1.R.C.(MD) No.69 of 2018
24.08.2018

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