



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2018

[Orders Reserved on 15.06.2017]

CORAM:

THE HONOURABLE MR. JUSTICE A.M. BASHEER AHAMED

Cr1.RC(MD)No.299 of 2014

and

M.P.(MD)No.1 of 2014

Shankar : Petitioner / Respondent

Vs.

1.Salini

2.Minor S.S.Aarathy Krishna : Respondents / Petitioners

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records in M.C.No.9 of 2011 on the file of the learned Judicial Magistrate No.1, Kuzhithurai and set aside the order, dated 13.03.2014.

For Petitioner

: Mr.D.Srinivasaraghavan

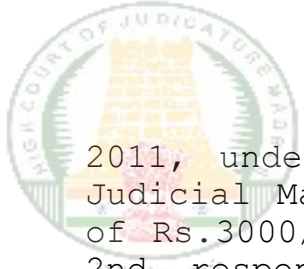
For Respondent

: Mr.S.Sivakumar

ORDER

This Criminal Revision Case has been filed praying to set aside the order, dated 13.03.2014 passed in M.C.No.9 of 2011, by the learned Judicial Magistrate No.1, Kuzhithurai.

2. The Revision petitioner herein is the sole respondent and the respondents herein are petitioners in M.C.No.9 of 2011, on the file of the learned Judicial Magistrate No.1, Kuzhithurai, Kanyakumari District. The respondents herein are the wife and minor daughter respectively. The Revision petitioner and the first respondent are the husband and wife respectively and the 2nd respondent is their minor daughter born out of their lawful wedlock. After their marriage, dated 15.05.2003, the Revision petitioner and the first respondent were living together at Marthandam, as Husband and wife, in the matrimonial home, and out of their lawful wedlock, the first respondent gave birth of a female child on 10.06.2004, who is the 2nd respondent herein.



3. The first respondent herein filed M.C.No.9 of 2011, under Section 125 of Cr.P.C., on the file of the learned Judicial Magistrate No.1, Kuzhithurai, seeking monthly maintenances of Rs.3000/-, for the first respondent herein and Rs.2000/- to the 2nd respondent herein, totally a sum of Rs.5000/-, from the revision petitioner herein, according to their family status. The first petitioner in that maintenance petition filed under Section 125 of Cr.P.C., herself is examined as P.W.1. The respondent in that petition has not chosen to examine himself and also there is no oral and documentary evidence on the side of the respondent / revision petitioner herein.

4. After perusing the evidence on record and hearing the arguments of both sides, the trial Court allowed the claim petition and awarded a sum of Rs.2000/- per month to the first petitioner / wife and Rs.1000/- to the 2nd petitioner/ minor daughter and directing the husband / respondent to pay the above monthly maintenance amount from the date of filing the petition ie., 23.02.2011. The trial Court has further directed in its order, dated 13.03.2014 that the respondent has to pay the arrears of maintenance of Rs.1,08,000/- from the date of filing the petition to the date of order, within a period of three months from the date of that order and to pay monthly maintenance in future, on or before the 5th of day every succeeding English Calender month. Aggrieved by the order of maintenance, the revision petitioner / husband filed the present Criminal Revision before this Court.

5. The learned counsel appearing for the revision petitioner / husband would contend that the first respondent has voluntarily left the matrimonial home along with the 2nd respondent and deserted the revision petitioner without any valid reason and as such, they are not entitled for seeking maintenance from the revision petitioner herein. He would further contended that the trial Court has awarded a sum of Rs.3000/- to both the respondents, as maintenance, without taking note of the income of the revision petitioner ie., Rs.6000/- and admittedly, the revision petitioner is a sick person.

6. Perused the materials on record. Heard and considered the rival submissions advanced by either side.

7. The lawful relationship between the revision petitioner and the first respondent, as husband and wife, and also the 2nd respondent, as the daughter born to them, is admitted. The monthly income of the revision petitioner is also stated as Rs.6000/- per month in his counter statement. It is contended that the revision petitioner is a sick person and also taking treatment in a Hospital at Marthandam. It is further admitted by the respondents herein in their evidence that parents of the revision petitioner died prior to the marriage between the revision petitioner and the first respondent and only one sister of the revision petitioner was already married prior to their marriage and she was residing at Mumbai.



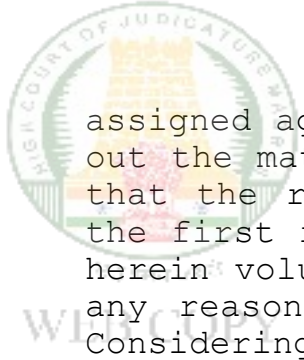
8. Admittedly, the respondents are living in the house of the parents of the first respondent now and they are under the care and custody of the parents from 11.05.2007 and the respondents are not having any income to maintain themselves and they are depending upon the parents of the first respondent herein. P.W.1 / the first respondent has deposed that they were driven out by the revision petitioner on 11.05.2007, since the revision petitioner was very often torturing the respondent and subject to domestic violence without providing any food to them, by demanding additional dowry and the revision petitioner is a drunkard and he took away the jewels of the first respondent herein and they have no means to maintain themselves.

9. The revision petitioner has not adduced any contra evidence, though he filed counter statement denying those facts. No reason is adduced for non-examination of the revision petitioner before the trial Court. The first respondent / P.W.1 has deposed by filing proof affidavit that the respondent was working as a Manager in Screen Printing Company at Chennai and he was getting a monthly income of Rs.20,000/- from the Company, as salary, and the revision petitioner is having sufficient means to himself and also the respondents herein. The respondent has stated in his counter that he was getting monthly salary of Rs.6,000/- per month, but no proof of salary certificate or monthly income of the revision petitioner was filed before the trial Court. There is no contra evidence by the revision petitioner against the allegation of cruelty committed by the revision petitioner and also the monthly income of the revision petitioner deposed by P.W.1.

10. Mere statement of P.W.1 during her evidence that she is not willing to go and live with her husband is not sufficient to hold that the first respondent herself deserted the revision petitioner and hence, she has left the matrimonial home voluntarily. P.W.1 has categorically admitted that she has given reply through her counsel to the Notice given by the revision petitioner that she was also willing to live with her husband. No evidence was let in by the revision petitioner to substantiate the allegations and also the conduct against the first petitioner made in his counter statement.

11. The grounds raised by the revision petitioner in this criminal revision is not sustainable one, after considering the evidence of P.W.1 and also the conduct of the revision petitioner, who failed to examine himself as a witness to deny those allegations made by P.W.1 during her evidence. The impugned award towards maintenance of the respondents herein is a reasonable one, considering the day-to-day cost of living and also status of both parties, in my considered view.

12. The revision petitioner is bound to maintain his wife and his minor daughter. There is no sufficient reasons



assigned against the first respondent herein, who said to have left out the matrimonial home without any valid reasons. Mere statement that the respondents herein are living with the parents' house of the first respondent is not sufficient to hold that the respondents herein voluntarily abandoned the revision petitioner herein without any reason and also left the matrimonial home in the year 2007. Considering the above facts and circumstances, this Court finds that no valid reason to interfere with the impugned order of learned Judicial Magistrate No.1, Kuzhithurai, dated 13.03.2014 in M.C.No.9 of 2011, awarding the maintenance in favour of the 1st respondent wife and minor daughter of the revision petitioner.

13. In the result, the Criminal Revision Petition stands dismissed. The Interim Stay already granted by this Court stands vacated. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The Judicial Magistrate No.1,
Kuzhithurai.

2.The Record Keeper, (2copies)
Criminal Record Section
Madurai Bench of Madras High Court,
Madurai

+One cc to Mr.D.Srinivasa Raghavan, Advocate, SR.No.49106

+One cc to Mr.S.Sivakumar, Advocate, SR.no.48959

MPK
RL/6C/2P/MR/SAR1/21/2/2018

Order made in

Cr1.RC (MD) No.299 of 2014