



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.09.2018

DELIVERED ON : 27.09.2018

WEB COPY

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.R.C (MD) No.432 of 2018

and

Crl.M.P (MD) No.6047 of 2018

Sreedharan : Petitioner/Respondent

Vs.

Bama : Respondent/Petitioner

PRAYER: Criminal Revision Case is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to revise the order of the learned District Judge, Family Court, Kanyakumari Division at Nagercoil, dated 08.06.2018 made in M.C.No.18 of 2018 of awarding maintenance to the tune of a sum of Rs.6000/- from 11.08.2017 to the respondent herein by the petitioner forthwith.

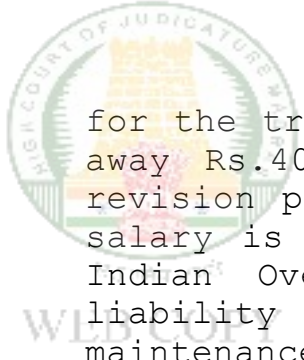
For Petitioner : Mr.S.Palanivelayutham

For Respondent : Mr.T.Selvakumaran

ORDER

This Criminal Revision Case is directed against the order passed by the Family Court, Kanyakumari Division at Nagercoil in the petition filed under Section 125 Cr.P.C. seeking maintenance by the wife, who is the respondent herein.

2.Alleging harassment and ill-treatment coupled with desertion, the respondent/wife has filed petition for monthly maintenance of Rs.10,000/- per month from the revision petitioner/husband. The revision petitioner/husband denying the receipt of 30 sovereigns gold ornaments, cash of Rs.1 lakh and household articles worth Rs.50,000/-, had contended that the respondent/wife though got married, did not attain puberty and was unfit to deliver child. Therefore, she was taken to doctor. Even after spending huge amount on her health, she did not co-operate



for the treatment and left the matrimonial home on her own taking away Rs.40,000/-, two gold rings weighing 1½ sovereigns. The revision petitioner/husband further contended that his carry home salary is Rs.13,295/-, in which he has to pay Rs.3,227/- to the Indian Overseas Bank, Asaripallam for the loan and pleaded liability to pay maintenance as well as capacity to pay the maintenance of Rs.10,000/- as claimed in the petition.

3.The Trial Court after considering the four documents filed on behalf of the respondent/petitioner and eleven documents filed on behalf of the revision petitioner/respondent had allowed the petition fixing Rs.6,000/- per month as maintenance to the respondent/wife.

4.Aggrieved by that the present revision petition is filed on the ground that the revision petitioner as dutiful husband, has taken care of the respondent/wife. After knowing that his wife suffers physically incapacity to get conceived, he arranged for medical assistance and spent for her treatment, but she did not cooperate for the treatment and voluntarily left the matrimonial home. His wife and her parents had voluntarily suppressed the fact that his wife had not attained puberty and she is not capable of conceiving child. Her menstrual cycle was irregular, which as been admitted by her in her deposition. Despite that the Court below instead of dismissing the maintenance petition on the ground that it was a voluntary desertion and the revision petitioner is not liable to maintain under Section 125 Cr.P.C., had erroneously fixed Rs.6,000/- as maintenance without considering his earning capacity.

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

6.The specific contention raised in the revision petition is that when the desertion is voluntary and the wife is not willing to join her husband, there is no necessity to pay maintenance to the wife. In support of his contention, the learned counsel appearing for the revision petitioner would rely upon the Judgment of the Hon'ble Supreme Court in **Deb Narayan Halder v. Smt.Anushree Halder** reported in **AIR 2003 SC 3174**, wherein the Hon'ble Supreme Court has held that when the allegations made in the maintenance petition are found to be false and the withdrawal from the matrimonial home is voluntary, the husband need not pay maintenance under Section 125 Cr.P.C.

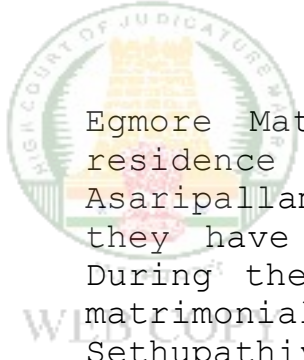
7.Drawing analogy from the above facts, the learned counsel appearing for the revision petitioner/husband would submit that the respondent/wife has made a false allegation against him that ~~she has been in an intimate relationship with certain ladies and she has also named them, which held to be false by the Trial Court.~~ Further, the

responden
for Benga

9. The learned counsel appearing for the respondent/wife would submit that the revision petitioner herein initially was serving at Chennai Egmore Maternity and Child Hospital as attender drawing more than Rs.25,000/- as salary. He had developed intimacy with one lady by name Latha. When that was objected by his wife, he has started ill-treating her. Later he was transferred from Chennai to Nagercoil in the year 2013. When the family was shifted to Nagercoil, the family members of the revision petitioner used to call her barren and the money and jewels given by her parents were taken away by the revision petitioner. When her brother met the revision petitioner to negotiate and reconcile the family dispute, the revision petitioner abused him and driven him away from the home. When she was already ready to live with him, the revision petitioner herein with the *mala-fide* intention had not only deserted her quoting her health, but also continuously maligning her. Since the respondent/wife has no other source of income to take care of herself, the revision petitioner who is a Government servant employed as Assistant in the Tamil Nadu Health Services, is liable to pay maintenance as fixed by the Trial Court. The *mala-fide* of the revision petitioner and his falsity could be easily seen from the suppression of his income.

"Whether the order of the Trial Court fixing Rs.6,000/- as monthly maintenance is erroneous?"

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Egmore Maternity and Child Hospital and therefore shifted the residence to Chennai. In the year 2013, he was transferred to Asaripallam Government Medical College, Nagercoil. Therefore, they have shifted the residence from Chennai to their native. During the month of January, 2013, the respondent has left the matrimonial home and started living with her mother at Sethupathiyur.

12.The revision petitioner admits that house in 600 square feet was constructed in the year 2005 before he got appointment as attender. The medical records marked as Ex.R.2, Ex.R.3 and Ex.R4 would reveal that the respondent/wife had gynecological problem and being treated for the same. These medical records pertain to the years 2005, 2007 and 2008. Relying upon certain photographs of the respondent/wife, the revision petitioner has canvassed that the jewels which the revision petitioner has alledgedly sold, are still in possession of his wife.

13.From a perusal of these exhibits and allegations and counter allegations, it is clear that the parties who were happily living together till 2009 inspite of deprivation of progeny, between securing a job in 2009 and getting transferred from Chennai to Nagercoil in the year 2013, disharmony has developed. The medical records relied on by the revision petitioner cannot be a reason for refusing maintenance. The offer to join his wife also does not appears to be genuine. Therefore, the Judgment cited supra by the revision petitioner does not apply to the facts of the case. In this case, the wife has expressed her willingness to join him and no positive action has been taken by the revision petitioner herein to bring her back.

14.In the said circumstances, this Court finds that the revision petitioner is bound to maintain his wife, who has proved that she is not able to maintain herself. It appears that the respondent/wife being found medically not fit to conceive, the revision petitioner herein had decided to desert her. In the said circumstances, this Court finds that there is no merit in the Criminal Revision Case and accordingly, the same is dismissed, confirming the order dated 08.06.2018 passed in M.C.No.18 of 2018 by the learned District Judge, Family Court, Kanyakumari Division at Nagercoil. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (AD-I)

/True Copy/



To

1. The District Judge, Family Court,
Kanyakumari Division at Nagercoil.

2. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.S.PALANI VELAYUTHAM, ADVOCATE IN SR No. 87589

+ 1 CC TO Mr.T.SELVAKUMARAN, ADVOCATE IN SR No. 87384

SMN

TE/PM/SAR-2 : 15/10/2018 : 5P/6C

ORDER MADE IN
Crl.R.C(MD)No.432 of 2018 and
Crl.M.P(MD)No.6047 of 2018
27.09.2018