



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.10.2018

PRONOUNCED ON : 09.10.2018

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CORAM:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

CRL.RC (MD) No.483 of 2018

K.Vijayalakshmi

.. Petitioner

-vs-

V.K.Shanmugavel

.. Respondent

Prayer: Criminal Revision Case is filed under Section 397(1) of Cr.P.C., to call for the records pertaining to the order M.C.No.16 of 2017 (Old M.C.No.11 of 2014), dated 07.04.2018, on the file of the Judicial Magistrate Court at Vadipatti, Madurai District and set aside the same.

For Petitioner : Mr.P.Muthu Vijayapandian

For Respondent : Mr.K.Muraleedharan

ORDER

This Criminal Revision Case is preferred against the dismissal of the application filed under Section 125 of Cr.P.C by the Revision Petitioner claiming maintenance against the respondent herein.

2.The contention of the revision petitioner in her maintenance case filed before the trial Court is that she got marriage to the respondent herein on 20.08.1980. Through the said wed lock they have a son and a daughter. The marital relationship has got resolved by a decree, passed in H.M.O.P.No.89 of 1999, dated 21.03.2003. The children are under the care and custody of the respondent. He does not allow the petitioner to meet or visit the children. The respondent who is working as Superintendent in Madurai Kamarajar University earn more than Rs.45,000/- as salary and leading a luxuries life. But, the petitioner though a graduate in Arts unable to make out her living. Hence, she has demanded Rs.17,000/- as monthly maintenance from the respondent.

3.The respondent herein has contested the maintenance petition on the ground that even after dissolving the marriage and deserting the children, the petitioner continues to harass him and the children. She has already married another person at Coimbatore



and therefore she is not entitled for any maintenance from the respondent.

4. The trial Court after considering the provision of law and the rival contentions of the parties has found that the petitioner had inherited the property through her father and sold the property for Rs.4 lakhs. She is a B.A., graduate possessing of eligibility to earn and make her living. Further, her mother has deposed that after the dissolution of marriage she is living with a person at Coimbatore as husband and wife. Based on these facts the trial Court has dismissed the maintenance petition.

5. In the revision petition filed against the order of dismissal, the petitioner contends that there is no proof of her marriage with a person belonging to Coimbatore. Her mother has deposed against her, since she has a motive against her in respect of the partition of her father's property. The amount received by her through the partition of the family property is not sufficient for her. Since the respondent is earning more than Rs.45,000/- per month, he is bound to maintain her.

6. This Court after hearing the respective counsels, to ascertain whether the allegations of re-marriage with a person of Coimbatore as deposed by the mother of the Revision Petitioner is true or not, sought the respective parties to file affidavit. The revision petitioner had filed affidavit contended that she has not re-married and her mother's evidence is a motivated evidence. The respondent herein only assert that the re-marriage of the petitioner is kept very secretly and he is not in a position to gather information, since the petitioner herein admittedly a member of 'Marxists Leninist' group which mostly work under secrecy.

7. The records reveals that the marriage between the parties got dissolved in the year 2003. Both the children are with the respondents. The revision petitioner has detached her bond with the family and living separately. Even, she has severed her relationship with her mother. Admittedly, she had received her share from the family property which indicates she has enough source to maintain herself. Section 125 (1)(a) of Cr.P.C can be invoked only if there is proof to show the wife is unable to maintain herself. In this case, the conduct of the revision petitioner as well as the evidence placed before the Court indicates that she is capable of maintaining herself as she has source to maintain herself and also she does not deserve any monetary support from her erst-while husband who from his earning taking care of himself and two children born through the wedlock with the revision petitioner. Therefore, this Court finds no point in allowing this revision petition.

<https://hccservices.nclt.gov.in/hccservices/>

8. Accordingly, this petition is dismissed and the order, dated



07.04.2018, dismissing the M.C.No.11 of 2014 re-numbered as M.C.No.16 of 2017 on the file of the Judicial Magistrate, Vadipatti, Madurai District is confirmed.

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Sd/-

Assistant Registrar (Protocol)

// True Copy //

Sub Assistant Registrar(CS-III)

To

1.The Judicial Magistrate, Vadipatti, Madurai District.

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

+ 1 CC TO MR.P.MUTHU VIJAYAPANDIAN, ADVOCATE IN SR NO.89733

+ 1 CC TO MR.K.MURALEEDHARAN, ADVOCATE IN SR NO.89792

TM

BU/NM/RP/SAR-III:15.11.2018 : 3P/6C

Order made in
CRL.RC(MD)No.483 of 2018
09.10.2018