



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.R.C.(MD) No.574 of 2013

Latha ...Revision Petitioner/1st Petitioner

vs.

Rajendran ...Respondent / Respondent

PRAYER: Criminal revision filed, under Section 397 r/w 401 Cr.P.C., to call for the records and to set aside the order passed by the learned Family Judge, Madurai, in M.C.No.18 of 2006, dated 15.05.2013, as against the petitioner.

For Petitioner : Mr.Babu Rajendran

For Respondent : Mr.R.Narayanan

O R D E R

For the sake of convenience, the parties are referred to by their name in this order.

2. Latha got married to Rajendran on 04.03.1993 and they have one son - Jayaprakash through the wedlock. On account of matrimonial discord, the couple got estranged resulting in Latha filing H.M.O.P.No.442 of 2005 for divorce, before the Family Court, Madurai. Latha also filed M.C.No.18 of 2006, under Section 125 Cr.P.C., before the Family Court, Madurai, against her husband - Rajendran, claiming maintenance for herself and her minor son - Jayaprakash. From 2006 to 2013, the matter was adjudicated by the Family Court, Madurai, wherein three witnesses were examined and nine exhibits were marked on behalf of Latha. Rajendran examined himself as R.W.1 and marked two exhibits. However, without considering the evidence adduced by both parties, the Family Court, Madurai, by a laconic order, has denied maintenance to Latha and granted maintenance of Rs.2,000/- per month to the minor son - Jayaprakash. Challenging the same, Latha has filed the present revision.

3. Heard Mr.Babu Rajendran, learned counsel appearing for Latha and Mr.R.Narayanan, learned counsel appearing for Rajendran and perused the materials filed in the form of typed set.



4. For better appreciation of the case, it may be relevant to extract the following portion of the impugned order, dated 15.05.2013, passed by the Family Court, Madurai, in M.C.No.18 of 2006, hereunder:

“Records perused. Admittedly the 1st petitioner filed HMOP No.442/2005 for divorce and the same is allowed on today. According to the respondent, the 1st petitioner is leading immoral life, so she is not entitled to maintenance. Admittedly the son is under the care and custody of the 1st petitioner. As a father the respondent is bound to maintain his son / 2nd petitioner. He is working in a private concern and earning more than Rs.9,000/- p.m. On considering the income of the respondent, he is directed to pay a sum of Rs.2,000/- p.m. to the 2nd petitioner towards monthly maintenance. Against the 1st petitioner the petition is dismissed.”

5. Though in a proceedings under Section 125 Cr.P.C., the Court is not expected to pass a detailed order as if in a sessions case, yet, the Court is required to give findings about certain minimum facts, namely, relationship of the parties; whether the husband had neglected or refused to maintain his wife; that the husband has sufficient means. Maintenance can be denied to the wife under Section 125(4) Cr.P.C., if it is established that she is living in adultery. Therefore, the burden is on the husband to prove by satisfactory evidence that his wife is living in adultery. In this case, the impugned order is bereft of even the minimum particulars as required by the law. The learned Trial Judge has merely stated that “According to the respondent, the first petitioner is leading immoral life, so she is not entitled for maintenance”. The learned Trial Judge has accepted ipsi dixit of the respondent / husband without anything more.

6. The learned counsel appearing for Latha submitted that even the sum of Rs.2,000/- that has been awarded to the minor son - Jayaprakash was not paid by Rajendran, which is of course disputed by the learned counsel appearing for Rajendran. Further, the learned counsel appearing for Latha submitted that the minor son - Jayaprakash has now attained the age of majority and therefore, he will not be entitled to the maintenance thereafter. However, Rajendran will have to pay the arrears, if any, that is payable to Jayaprakash at the rate of Rs.2,000/- per month till he attains the age of majority.

7. In such view of the matter:

- (i) The criminal revision is partly allowed and the impugned order, dated 15.05.2013, made in M.C.No.18 of 2006, by the learned Judge, Family Court, Madurai, in respect of Latha alone, is



hereby set aside. The award of Rs.2,000/- per month as maintenance to Jayaprakash stands maintained.

(ii) M.C.No.18 of 2006 is remitted back to the Family Court, Madurai, for fresh disposal in accordance with law.

(iii) Both the parties are directed to appear before the Family Court, Madurai, on 01.03.2018 at 10.30 a.m., and the learned Judge, Family Court, Madurai, is directed to dispose of the same within a period of three months thereafter.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To:

The Judge, Family Court, Madurai.

Copy to:

The Section Officer
Criminal Section/Records,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CC to Mr.R.Narayanan, Advocate, SR.No. 44429

Crl.R.C.(MD) No.574 of 2013
29.01.2018

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