

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 10.01.2019
PRONOUNCED ON : 25.01.2019
CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1139 of 2011
and M.P.No.1 of 2011

1.Poongodi
2.Minor Tamilselvan
Rep. by his mother Poongodi

.. Petitioners/Respondents

Vs

R.Rangasamy

.. Respondent/ Petitioners

Criminal Revision preferred under Section 397 r/w 401 Cr.P.C. to set aside the order passed in Criminal Revision Petition No.128 of 2008 dated 21.11.2009 on the file of the Additional District and Sessions Judge (Fast Track Court No.IV), Coimbatore at Tiruppur by reversing the well considered order in M.C.No.2 of 2003 dated 10.09.2008 on the file of the District Munsif-cum-Judicial Magistrate, Avinashi by allowing the present Criminal Revision Case.

For Petitioners : Mr.Ma.P.Thangavel
For Respondent : Mr.K.Govi Ganesan

O R D E R

This Criminal Revision Petition has been preferred to set aside the order dated 21.11.2009 passed by the Additional District and Sessions Judge (Fast Track Court No.IV), Coimbatore at Tiruppur in Criminal Revision Petition No.128 of 2008, reversing the order dated 10.09.2008 passed by the District Munsif-cum-Judicial Magistrate, Avinashi in M.C.No.2 of 2003.

2.For the sake of convenience, the parties will be referred to by their name.

3.Poongodi got married to Rangasamy in the year 1991 and they have two sons through the wedlock. The couple got estranged, resulting in Rangasamy keeping his elder son and Poongodi taking with her, their younger son viz., Tamilselvan and living separately. Poongodi filed M.C.No.2 of 2003 before

the District Munsif-cum-Judicial Magistrate, Avinashi under Section 125 Cr.P.C. claiming maintenance for herself and her younger son Tamilselvan from Rangasamy.

4.On notice, Rangasamy entered appearance and contested the claim. In support of her claim, Poongodi examined herself as PW1 and also examined Douglas, Assistant Manager, State Bank of India and K.Kumar, Branch Manager, Bharat Bank as PW2 and PW3 respectively and marked Exs.P1 to P4. Rangasamy examined himself as RW1 and examined Palanisamy and Alli as RW2 and RW3 respectively and marked Exs.R1 to R4.

5.After considering the evidence on record, the trial Court, by order dated 10.09.2008, in M.C.No.2 of 2003, found that Rangasamy had deserted his wife, for no sufficient cause and directed him to pay maintenance of Rs.500/- per month, per person as maintenance from the date of petition.

6.Challenging the order of maintenance, Rangasamy filed Criminal Revision Petition No.128 of 2008 before the Court of Session, which was heard by the Additional District and Sessions Judge (Fast Track Court No.IV), Coimbatore, who by order dated 21.11.2009, set aside the order of the trial Court, aggrieved by which, Poongodi is before this Court.

7.Heard Mr.Ma.P.Thangavel, learned counsel for Poongodi and Mr.K.Govi Ganesan, learned counsel for Rangasamy.

8.The Sessions Court has reversed the order of the trial Court on the ground that Poongodi refused to join Rangasamy, despite issuance of notice by Rangasamy calling upon her to join him. The Court of Session has also held that it was Poongodi, who used to pick up quarrels very frequently, with her husband Rangasamy and go off to her natal home. The Sessions Court has also held that Poongodi has Rs.40,000/- by way of Kisan Vikas Patra and so she has means to take care of herself and Rangasamy has no means to take care of his parents and the eldest son, who is living with him.

9.On reading of the evidence on record, it is seen that Poongodi got separated from Rangasamy because, she was physically abused. She has stated in her evidence that Rangasamy would assault her frequently and would ask her to get money from her parents. She has specifically pleaded that on 02.08.2002, Rangasamy assaulted her and chased her to her parents house. On 09.08.2002, a panchayat was held, in which, the parents of Poongodi agreed to give some jewels, pursuant to which, Poongodi joined Rangasamy. Thereafter, there was no change in the attitude of Rangasamy and on 06.09.2002, he once again assaulted

her and demanded Rs.25,000/- from her parents. She has specifically stated that he held by her hair and pushed her out of the house on the street. Therefore, she had no other alternative, but, to lodge a complaint to the police on 07.09.2002, for which, a case in Crime No.22 of 2002 was registered against Rangasamy. Therefore, the trial Court was perfectly justified in holding that Poongodi had sufficient reasons to stay away from Rangasamy.

10.The finding of the Sessions Court that Poongodi should have joined Rangasamy, after Rangasamy issued the notice calling upon her to join him, appears unacceptable because, it was clear to Poongodi that despite several panchayats by elders, there was no change in the attitude of Rangasamy and he continued to beat her. Hence, this finding of the Sessions Court deserves reversal.

11.Through Palanisamy (RW2) and Alli (RW3), Rangasamy has established that Poongodi had obtained loan from the bank on 16.09.2004 for Rs.24,000/- by pledging Rs.40,000/- worth Kisan Vikas Patra. Therefore, the Sessions Court has lost sight of the fact that Poongodi had borrowed Rs.24,000/- from the bank by pledging the Kisan Vikas Patra, which itself shows that she needed money badly. That apart, this loan transaction was in the year 2004, which is subsequent to the filing of the maintenance petition, obviously because, she needed money to sustain herself and her son. Hence, the reasoning of the Sessions Court that Poongodi has sufficient means to maintain herself cannot be countenanced. The trial Court has awarded a paltry sum of Rs.500/- each, per month as maintenance, which the Sessions Court unfortunately reversed without properly appreciating the evidence on record. In the result, this Criminal Revision Petition is allowed and the order dated 21.11.2009 passed by the Additional District and Sessions Judge (Fast Track Court No.IV), Coimbatore at Tiruppur in Criminal Revision Petition No.128 of 2008 is hereby set aside and the order dated 10.09.2008 passed by the District Munsif-cum-Judicial Magistrate, Avinashi in M.C.No.2 of 2003 stands restored. Rangasamy is liable to pay the arrears of maintenance amount from the date of filing of M.C.No.2 of 2003 up to this date and in the future, including the period from 21.11.2009 to this date. Connected Miscellaneous Petition is closed. Registry is directed to send the original records to the trial Court forthwith.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gya

To

1.The Additional District and Sessions Judge,
(Fast Track Court No.IV),
Coimbatore at Tiruppur.

2.The District Munsif-cum-Judicial Magistrate,
Avinashi.

3.The Public Prosecutor,
High Court, Madras.

4.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.6364

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.6173

CRL.R.C.No.1139 of 2011

SJ(CO)
GSP(12/02/2019)