

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1163 of 2011

Sakthivel @ Ganesan

.. Petitioner

Vs

Rajamani

.. Respondent

Criminal Revision preferred under Section 397 r/w 401 Cr.P.C. to call for the records of the Judicial Magistrate Court No.II, Sankari in M.C.No.3 of 2005 and set aside the order dated 20.12.2006.

For Petitioner : Mr.K.P.Anantha Krishna

For Respondent : Mr.R.Rahul
for Mr.N.Manokaran

O R D E R

This Criminal Revision Petition has been preferred to set aside the order dated 20.12.2006 passed by the Judicial Magistrate No.II, Sankari in M.C.No.3 of 2005.

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

3.Rajamani got married to Sakthivel @ Ganesan, sometime in the year 1982. Thereafter, they got estranged. Rajamani filed M.C.No.3 of 2005 before the Judicial Magistrate No.II, Sankari under Section 125 Cr.P.C. claiming maintenance of Rs.3,000/- from Sakthivel.

4.On notice, Sakthivel entered appearance and contested the claim. Rajamani examined herself as P.W.1 and marked ten exhibits. Sakthivel examined himself as R.W.1. and no document was marked on his behalf.

5.After hearing either side and considering the evidence on record, the learned Judicial Magistrate No.II, Sankari, by order dated 20.12.2006, in M.C.No.3 of 2005, awarded maintenance of

Rs.1,500/- per month from the date of petition. Challenging the said order, Sakthivel is before this Court under Section 397 r/w 401 Cr.P.C.

6.Sakthivel engaged Mr.V.Vijayakumar, Advocate to file this revision petition, which itself was filed with a delay of 133 days. This Court, in M.P.No.1 of 2007 in Crl.R.C.No.SR 37615 of 2007 condoned the delay on 12.02.2008, on condition that Sakthivel should deposit Rs.55,000/- within four weeks from the date of receipt of a copy of the order and Rajamani will be entitled to withdraw the same. On 11.03.2008, this sum was deposited. After the delay was condoned, the revision petition was numbered as Criminal Revision Petition No.1163 of 2011. Sakthivel prayed for stay of the order of maintenance in M.P.No.1 of 2011 in Crl.R.C.No.1163 of 2011, in which, this Court passed the following order on 29.08.2011 :

"Interim stay on condition that the petitioner shall deposit a sum of Rs.40,000/- (Rupees forty thousand only) to the credit of M.C.No.3 of 2005 on the file of Judicial Magistrate, Sankari, within a period of six weeks from today and shall continue to deposit a sum of Rs.1,000/- (Rupees one thousand only) on or before 5th day of every month, failing which the order of Stay passed herein above shall stand automatically vacated without further reference to this Court.

2.The respondent is entitled to withdraw the amount on due application.
Notice."

7.On notice, Rajamani entered appearance. When the matter was taken up for final disposal, Mr.Vijayakumar, learned counsel on record for Sakthivel represented that he has recused himself from the case, by returning the bundle to the trial Court Advocate as early as 09.06.2018. He has also filed a memo to that effect on 23.01.2019. Therefore, the name of Sakthivel was printed in the cause list on 24.01.2019 and his name called out thrice by the Court Attender. Sakthivel had not made any arrangements to enter appearance.

8.Though while exercising revisional jurisdiction, this Court can peruse the records and find out, if there is any illegality or impropriety by itself, still, this Court did not want to venture into such an exercise and therefore, this Court nominated Mr.K.P.Anantha Krishna (Enrl.No.1080/2000), an Advocate of more than 15 years standing in the criminal bar to take up the case of Sakthivel. He was furnished with copies of the typed set of papers and other records and the case was adjourned to 25.01.2019.

9.Heard Mr.K.P.Anantha Krishna, learned counsel for Sakthivel and Mr.R.Rahul, learned counsel for Rajamani.

10.Rajamani, in her evidence before the trial Court, has stated that Sakthivel married her in the year 1982 and at the time of marriage, Sakthivel demanded and obtained 27 sovereigns of gold and Rs.20,000/- cash and Rs.17,000/- for purchasing a motorcycle; after the marriage, Sakthivel started calling her barren and abusing her, for not begetting him a child; ultimately, she was driven away to her natal home and was left in the lurch; therefore, she had no other alternative, but, to lodge a police complaint; thereafter, Sakthivel got married to one Arukkani and has a child Nivedha, through her; Sakthivel has about 10 acres of land, inherited by him from his deceased father; Sakthivel intimidated and threatened her on 04.01.2005, in connection with which, on the complaint given by her, a case in Sankari Police Station Crime No.2 of 2005 under Sections 498-A, 494, 406 and 506(II) IPC was registered.

11.Rajamani was extensively cross-examined by Sakthivel and it was suggested to her that, she herself had voluntarily moved away from Sakthivel, which suggestion, she denied. Sakthivel examined himself as R.W.1 and denied the allegations made by Rajamani and stated that she had, on her own accord, left his company and that, he had not deserted her. He has also stated that he is earning Rs.60/- to 80/- per day, as daily wages from farm work and that, Rajamani is employed as a Noon Meal Assistant in the Noon Meal Centre and is earning about Rs.4,000/- per month.

12.Mr.K.P.Anantha Krishna contended that Rajamani had admitted that she was living away after three years of marriage, but, has chosen to file the maintenance petition only in the year 2005, which itself shows that she had sufficient means to take care of herself. He further contended that Rajamani was employed as Assistant in the Noon Meal Centre and therefore, she will not be entitled to maintenance. He submitted that the allegations made in the criminal complaint are false. He further submitted that at the time of separation, on the intervention of elders, a consolidated amount as one time settlement was given to Rajamani and the panchayatdars dissolved the marriage.

13.Per contra, Mr.R.Rahul, learned counsel for Rajamani refuted the contentions put forth by the learned counsel for Sakthivel.

14.This Court gave its anxious consideration to the rival submissions.

15.It is true that Rajamani got married in the year 1982 and from the evidence of Rajamani, it is seen that she was subjected to cruelty and was driven away from the matrimonial home because, she was barren. This is fortified by the fact that a case in Crime No.2 of 2005 was registered against Sakthivel, wherein, apart from Section 498-A IPC, Section 494 IPC (bigamy) allegation also has been included.

16.It is the specific case of Rajamani that Sakthivel got married to Arukkani and has a child Nivedha through her, to prove which, she marked Ex.P5, the voters list. Except a bare denial, Sakthivel has not adduced any evidence to dislodge this allegation.

17.As regards the contention that Rajamani was gainfully employed, Rajamani admitted that she was given a temporary job of Assistant in the Noon Meal Scheme in the village and was paid only daily wages. It is common knowledge that the Government introduced Noon Meal Scheme in all the schools in the State, for which, women were temporarily appointed for cooking meal for the children. When the Government changes, the Noon Meal Scheme appointees will be ousted and fresh appointments will be made, depending upon the political hue of the appointees. One cannot expect a deserted woman to starve and die and wait for the maintenance amount quite indefinitely, for the Court to award maintenance.

18.As regards the contention that the panchayatdars dissolved the marriage and the consolidated amount was paid as maintenance to Rajamani, no satisfactory evidence has been adduced to prove this fact. Even otherwise, after coming into force of the Hindu Marriage Act, 1955, marriages cannot be dissolved by panchayatdars in Kangaroo Courts and the maintenance awarded is against statute.

19.As regards the financial ability of Sakthivel, Rajamani has marked Exs.P7 and P9 to show that he has two acres of arable lands and a permanent house. Therefore, the contention of Sakthivel that he was only a daily wage agricultural labourer, stands belied. A sum of Rs.1,500/- as maintenance in today's cost of living cannot be said to be excessive.

In the result, this revision petition is dismissed as being devoid of merits. This Court places on record, its appreciation to Mr.K.P.Anantha Krishna for having done his best in prosecuting this case and to Mr.R.Rahul, for defending the case of the respondent. Registry is directed to send the original records to the trial Court forthwith.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The Chief Judicial Magistrate,
Sankari.
- 2.The Judicial Magistrate No.II,
Sankari.
- 3.The Deputy Registrar,
Criminal Section,
High Court, Madras. {with a direction to send the
original records to the trial
Court forthwith.}

+lcc to Mr.N.Manokaran, Advocate sr.6270

CRL.R.C.No.1163 of 2011

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