

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.Nos.1181 AND 1795 of 2011

R.Jayachandran .. Petitioner in Crl.R.C.No.1181/11
.. Respondent in Crl.R.C.No.1795/11

Vs

Amutha @ P.Amuthasurabi .. Respondent in Crl.R.C.No.1181/11
.. Petitioner in Crl.R.C.No.1795/11

Criminal Revision Petitions preferred under Section 397 r/w
401 of Cr.P.C. against the order dated 24.06.2009 passed by the
Judge, Family Court, Coimbatore in M.C.No.115 of 2006.

For Petitioner
in Crl.R.C.No.1181/11/
For Respondent
in Crl.R.C.No.1795/11 : Mr.P.Kumanan

For Respondent
in Crl.R.C.No.1181/11/
For Petitioner
in Crl.R.C.No.1795/11 : Mr.S.Gunalan

C O M M O N O R D E R

These Revision Petitions have been preferred challenging the
order dated 24.06.2009 passed by the learned Judge, Family
Court, Coimbatore in M.C.No.115 of 2006.

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

3.Jayachandran, who was a Soldier in the Indian Army, got
married to Amutha on 25.06.1990 and they were issueless. Amutha
initiated proceedings in M.C.No.115 of 2006 before the Family
Court, Coimbatore under Section 125 Cr.P.C. against
Jayachandran, claiming Rs.15,000/- per month as maintenance. It
is the case of Amutha that since Jayachandran suffered
infertility, she could not conceive and this caused discord in
their marital relationship, leading Jayachandran to consume

liquor and beating her. It is her further case that when Jayachandran was in Rajasthan where he was posted in the year 2002, he quarreled with her and dropped her in her natal home and deserted her. She has further admitted in her petition that Jayachandran issued a legal notice dated 14.12.2004 for restitution of conjugal rights, to which, a reply dated 24.01.2005 was issued by her, agreeing to join him, despite which, he had failed to live with her. Hence, the petition and the claim for maintenance.

4. Jayachandran entered appearance and filed his counter, denying the allegations of Amutha. According to Jayachandran, Amutha cannot conceive, due to her ill health and their attempts to adopt a child did not bear fruition. It was Jayachandran's contention that Amutha had gone to her natal home on her own volition and that, he had never deserted her.

5. Amutha examined herself as PW1 and one Mohanram was examined as PW2, in order to establish the financial capability of Jayachandran. On behalf of Amutha, 7 documents (Ex.P1 to Ex.P7) were marked. On the side of Jayachandran, he examined himself as RW1 and marked 21 documents. One document was marked as Court document (Ex.C1).

6. After considering the evidence on record, the Family Court, by order dated 24.06.2009 in M.C.No.115 of 2006, has returned a finding that, it was Jayachandran, who deserted Amutha for no good reason and he was directed to pay a sum of Rs.1650/- per month as maintenance to her. Challenging the order of the Family Court, Jayachandran has preferred Crl.R.C.No.1181 of 2011. Aggrieved by the quantum of maintenance, Amutha has preferred Crl.R.C.No.1795 of 2011.

7. Heard Mr.P.Kumanan, learned counsel appearing for Jayachandran and Mr.S.Gunalan, learned counsel for appearing for Amutha.

8. The following facts are admitted by both sides :

- a) The marriage between Jayachandran and Amutha was solemnized on 25.06.1990.
- b) Jayachandran was an Army man in the rank of Subedar and was posted to various places in the northern sector.
- c) The couple were issueless.
- d) Jayachandran had retired from Army service at the age of 48 w.e.f. 01.09.2008 (date of birth 30.05.1960).
- e) Jayachandran issued the notice dated 14.12.2004 (Ex.P3), for which, Amutha issued reply notice dated 24.01.2005 (Ex.P4).

9. Before the trial Court, Amutha filed proof affidavit, reiterating the contentions raised in the petition and the same was treated as her examination in-chief. She has stated that even 15 years after marriage, she did not conceive, because Jayachandran was impotent; Jayachandran took treatment for that, but, discontinued it; in order to cover up the deficiency in him, he picked up quarrels for flimsy reasons, abused and assaulted her; when she wanted to adopt a child, he stonewalled the proposal; while they were living together in Rajasthan in the year 2002, when she raised the topic of adoption, he assaulted her and left her in her natal home and did not turn back.

10. However, in the cross-examination, she has admitted that, in the reply notice dated 24.01.2005 (Ex.P4), she had agreed to rejoin him, only on condition that, he agrees to adopt a child. She has also admitted in the cross-examination that during May 2006, she went along with Jayachandran to an adoption centre, where they offered twins for adoption, but, she wanted only one of the twins, but, the adoption centre refused to separate the twins and give one of them in adoption.

11. Thus, from her evidence, it is clear that till 2006, they both were scouting for adoption. This completely demolishes her case that Jayachandran had deserted her, while they were in Rajasthan in the year 2002. Even in the reply notice dated 24.01.2005 (Ex.P4), Amutha has not alleged that Jayachandran abused her and assaulted her in an inebriated state. Thus, it is clear that these allegations have been contrived for the first time, in the petition filed by Amutha in the year 2006, after her attempt to get a child in adoption failed. On the contrary, Jayachandran has filed a certificate dated 28.11.2007, issued by the Commanding Officer of his unit, which reads as under :

"TO WHOMSOEVER IT MAY CONCERN

This is certify that No.JC 223411P Rank Sub Maj Name R.Jeyachandran comes under PBOR (Personnel Below Officer Rank) is serving in Indian Army (Corps of Signals) since 28 Jan 1982 and presently serving in 1 Technical Training Regiment, 1 Signal Training Centre, Jabalpur (MP). It is further certified that the individual does not consume any type of alcohol at best of my knowledge. Mess bill of the JCO's Club, 1 Technical Training Regiment is attached to prove the above named individual as a non drinker. His character during his entire service is exemplary as per service documents held with this unit."

The mess bills sent by the Commanding Officer have been marked as Ex.B16 Series. Strangely, the trial Court has rejected these documents, on the ground that the Commanding Officer was not examined as witness on behalf of Jayachandran.

12. Similarly, Jayachandran has filed Ex.B4 to Ex.B11 to prove the medical treatment taken by both of them in various hospitals. On perusal of Ex.B9, it is clear that Amutha suffers from bilateral tubal block, which is the cause for her barrenness. On the contrary, the medical report of Jayachandran does not show that he suffered infertility. His sperm strength was found to be higher than the prescribed parameter, as could be seen from Ex.B11. The trial Court has rejected these documents also, on the short ground that the concerned doctors were not examined. The trial Court lost sight of Section 14 of the Family Courts Act, 1984, which reads as under :

"Application of Indian Evidence Act, 1872 - A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872."

13. That apart, proceedings under Section 125 Cr.P.C. are summary in nature and the evidence adduced by the parties should not be tested on the anvil of the proof required to establish a murder case. If such rigid standards are fixed, Section 14 of the Family Courts Act, 1984, would become otiose. It is not the case of Amutha that the documents filed by Jayachandran were fabricated ones. Therefore, the Family Court ought not to have refused to place reliance upon the medical test reports (Ex.B4 to Ex.B11), the mess bills and the certificate (Ex.B16 Series) issued by the Commanding Officer, on the ground that Jayachandran should have examined them as witnesses.

14. To recapitulate, in the reply notice dated 24.01.2005 (Ex.P4) given by Amutha, she has not stated that Jayachandran was addicted to liquor and that, he assaulted her. It is her specific case that she would rejoin him, on condition that, he agrees for adoption. The subsequent conduct of Jayachandran shows that, he had accompanied Amutha to an adoption centre in Coimbatore, which offered twins for adoption, but, Amutha wanted only one among the twins, which request was rightly rejected by the adoption centre, for which, Jayachandran cannot be held responsible. Yet, this Court is not inclined to interfere with the order of maintenance passed by the trial Court, sheerly on humanitarian grounds.

15. In the opinion of this Court, Amutha has not made out a case for enhancement of maintenance and therefore, CrI.R.C.No.1795 of 2011 is liable to be dismissed.

16. Mr.P.Kumanan, learned counsel for Jayachandran contended that Jayachandran has obtained an ex parte order of divorce in H.M.O.P.No.49 of 2005 from the Sub Court, Virudhunagar on 01.02.2007 and after eight years, he has remarried one

Vijayalakshmi on 25.10.2015, through whom, now, he has a child J.V.Kishore (date of birth 05.12.2016). Learned counsel further contended that this subsequent event proves beyond cavil that, Jayachandran was not impotent or suffered infertility as alleged by Amutha.

Be that as it may, both the Criminal Revision Petitions are dismissed and the order dated 24.06.2009 passed by the trial Court in M.C.No.115 of 2006 awarding maintenance of Rs.1,650/- is confirmed on humanitarian grounds.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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To

The Judge,
Family Court, Coimbatore.

+1 CC to Mr.P.Kumanan, Advocate sr 474.

+1 CC to Mr.M. Parthasarathy, Advocate sr 107.

+1 CC to Mr.S.Gunalan, Advocate sr 106.

CRL.R.C.Nos.1181 & 1795 of 2011

VSNII (CO)
SP (29/01/2019)

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