

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:09.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1525 of 2012

and

M.P.No.1 of 2012

A.S.Krishna

...Petitioner/Respondent

-Vs-

K.Sundaravalli

....Respondent/Petitioner

Prayer:This Criminal Revision is filed under Section 397 read with 401 of Code of Criminal Procedure, to call for the records in M.C.No.122 of 2006 on the file of the Family Court, Coimbatore and to set aside the same.

For Petitioner : Mr.C.Umashankar - No appearance

For Respondent : Notice not served

O R D E R

The Criminal Revision has been filed to set aside the order in M.C.No.122 of 2006, on the file of the Family Court, Coimbatore.

2. It is seen from the records, the petitioner is the husband and the respondent is the wife. The marriage between the petitioner and the respondent was solemnized on 11.12.1978 as per Hindu rites and customs. After marriage, the respondent was living in matrimonial house. In the wedlock, they were blessed with two female children. There arose a misunderstanding between the petitioner and the respondent and they were living separately. The petitioner/husband has filed a petition in HMOP. No.659 of 2006 before the Family Court, Coimbatore, for dissolution of marriage. During the pendency of the HMOP., the wife has also filed a maintenance case under Section 125 of Cr.P.C. before the Family Court, Coimbatore, in M.C.No.122 of 2006. The learned Family Court Judge, took the maintenance case and divorce petition together and passed the common order. The learned Judge directed the petitioner to pay a sum of Rs.2,000/- to the respondent towards maintenance.

3. Challenging the common order passed by the Family Court, Coimbatore, the petitioner/husband has filed the present revision before this Court.

4. When the matter was taken up for hearing on 06.08.2019, there was no representation on behalf of the petitioner and the matter was directed to be post on 09.08.2019. Even today, there is no representation for the petitioner. The revision is pending from the year 2012. Till date, the petitioner has not served notice to the respondent. Hence, this Court is inclined to dispose of the revision on merits in accordance with law.

5. According to the revision petitioner, the respondent has sent petitioner out from the matrimonial home. Therefore, the petitioner was living separately in a rented house. Hence, the petitioner has filed a petition in HMOP. No.443 of 2002 for divorce. During pendency of the HMOP.No.443 of 2002, the parties have agreed to live jointly, and hence the HMOP. was dismissed. After some time, the respondent deserted the petitioner and went out from the matrimonial home. Thereafter, the petitioner filed a petition in HMOP. No.659 of 2006 for dissolution of marriage. Therefore, she is not entitled to claim any maintenance from the petitioner. Now, the petitioner is getting only a sum of Rs.1,200/- per month as pension. But the respondent is receiving a sum of Rs.2,500/- per month as rental income. With the pension, he is unable to maintain himself, the learned Family Court Judge, failed to consider all these aspects and awarded a sum of Rs.2,000/- per month to the respondent towards maintenance, which warrants interference of this Court.

6. Perused the materials available on record. There is no representation on behalf of the petitioner and notice was also not served to the respondent till date. The Criminal Revision is pending for more than seven years.

7. On a careful perusal of the records, it is seen that the marriage between the petitioner and the respondent, paternity of the children, relationship of the parties as well as the fact that they are living separately are not in dispute. Admittedly, the petitioner was working in a private company and getting a salary of Rs.11,000/- per month, in the year 2006. He has denied the said sum as salary, but, he has not produced any salary certificate that what is his actual income. The petitioner is employed in a private company. He would be earning minimum wages. The learned Judge has awarded only a sum of Rs.2,000/- to the wife.

8. Admittedly, the respondent, wife is unemployed and getting Rs.2,500/- per month as rental income, which was not sufficient to maintain herself.

9. That being the case, considering the cost of living prevailing as on date, being the lady, the maintenance award passed by the lower Court is justifiable and the same does not warrant any interference. Even though a decree of divorce has been granted and the parties are no more husband and wife, still the petitioner is duty bound to maintain his divorced wife. As per explanation (b) to Section 125 of Cr.P.C., 'wife' includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married.

10. Considering the facts and circumstances of the case, this Court does not find any illegality or perversity in the order passed by the lower Court warranting interference.

11. Under these circumstances, the respondent is entitled to get maintenance from the petitioner. The petitioner is directed to deposit the entire arrears of maintenance within a period of three months from the date of receipt of a copy of this order. Further, the petitioner is directed to pay the monthly maintenance regularly which was ordered by the learned Judge, Family Court, Coimbatore in M.C.No.122 of 2006 to the respondent on or before every 5th day of English Calendar month, without any default.

12. In the result, this Criminal Revision is dismissed. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

The Judge, Family Court,
Coimbatore.

+1 CC to Mr.C.Umashankar, Advocate sr 68640.

Cr1.R.C.No.1525 of 2012
and
M.P.No.1 of 2012

PVS (CO)
SP(05/11/2019)