

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.03.2019

Coram:

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.287 of 2019
and
Crl.M.P.No.3304 of 2019

Shivaji

.. Petitioner

/versus/

Sathiya alias Sathiyabama

.. Respondent

Criminal Revision Case has been filed under Section 397 r/w 401 of Criminal Procedure Code to call for the records and to set aside the order dated 27.12.2018 in F.C.Crl.M.P.No.163 of 2014 in M.C.No.49 of 2009 of the Family Court Judge at Vellore.

For Petitioner : Mr.R.Anbalagan

For Respondent : No appearance

O R D E R

This Criminal Revision Case is filed aggrieved by the order of maintenance of Rs.6,000/- passed by the learned Family Court, Vellore in Crl.M.P.No.163 of 2014 in M.C.No.49 of 2009 dated 27.12.2018.

2. The learned counsel appearing for the revision petitioner would submit that in the order, which is impugned in the revision petition, the Magistrate has failed to consider the background of the case, the earning capacity of the revision petitioner and the necessity for the respondent to claim maintenance. Relying upon the admission of the respondent that she did not live with the revision petitioner even for a single day after the marriage, the learned counsel would submit that when the respondent herself admits that she did not live with the revision petitioner even for a single day, so, she is not entitled for any maintenance. The counsel would also submit that the respondent is working as a Teacher and she is having sufficient means to maintain herself. Therefore, she is not entitled for any maintenance, the counsel alleges that without considering all these facts, the Magistrate has passed the order.

3. The learned counsel appearing for the revision petitioner would also submit that earlier the learned Judge has fixed a sum of Rs.3,500/- by order dated 04.04.2018, which was set aside by this Court in Crl.R.C.No.654 of 2018 by its order dated 10.10.2018. Now the learned Magistrate has passed an identical order by enhancing the maintenance amount as Rs.6,000/- per month, without any reason.

4. The scrutiny of the records and the impugned order does not support the contentions of the the revision petitioner. The petitioner herein married the respondent on 28.08.2006. Thereafter, he has deserted the respondent demanding jewels. As a result of the misunderstanding, they have parted. Thereafter, the revision petitioner herein has not paid any money for the maintenance of the respondent. In the said circumstances, the maintenance petition was filed by the wife/respondent herein in the year 2009. Initially a sum of Rs.1,500/- was fixed as monthly maintenance. Later in the impugned order it is enhanced to Rs.6,000/- per month. The revision petition is directed against the fixation of enhanced maintenance of Rs.6,000/- to the wife, who is the respondent herein.

5. Earlier, when the respondent herein filed M.C.No.49 of 2009 before the Chief Judicial Magistrate, Vellore seeking maintenance, the Chief Judicial Magistrate fixed a sum of Rs.1,500/- per month as maintenance vide order dated 28.05.2010. After four years, the respondent herein filed a petition in Crl.M.P.No.163 of 2014 in M.C.No.49 of 2009 under Section 127 of Cr.P.C for enhancement stating that the maintenance amount fixed is insufficient. After considering the income of the respondent/revision petitioner and the other litigations, which were initiated by the respondent and the petitioner herein, the trial Court has fixed a sum of Rs.6,000/- as monthly maintenance from the date of filing of the petition.

6. From the records, this Court finds that the revision petitioner married the respondent on 28.08.2006. Admittedly, they did not live together even for a single day. There was a dispute between them regarding jewels and having deserted his wife, the petitioner herein who is employed as Cane Assistant, Tiruthani Co-operative Sugar Mill, Thiruvallangadu refused to maintain his wife. This prompted the respondent to file maintenance case against him. Earlier, considering the earning capacity of both the parties and the necessity, the Court has awarded Rs.1,500/- per month by order dated 28.05.2010. After lapse of more than five years, the respondent has sought for enhancement due to escalation of cost index. Though, the trial Court has passed an erroneous order earlier, that has been set aside by this Court by allowing the revision petition filed by the husband. On remand, the Magistrate has gone through the

records and considered the submissions of both the parties and passed a reasoned order wherein, the Court below has taken note of the income of the revision petitioner as well as the income of the respondent herein and has fixed a sum of Rs.6,000/- per month as maintenance as against the claim of Rs.20,000/- as maintenance.

7. This Court finds no error in the assessment of the trial Court fixing Rs.6,000/- per month as maintenance. It appears that the revision petitioner herein has not paid maintenance amount over and above the award of Rs.1,500/-, which was fixed in M.C.No.49 of 2009 dated 28.05.2010. Hence, this revision petition deserves to be dismissed.

8. In such circumstances, this Court is of the view that the revision petitioner herein shall pay the arrears amount within a period of three months and continue to pay a sum of Rs.6,000/- per month as fixed by the trial Court regularly. The revision petitioner, though well placed and employed as Cane Assistant in the Co-operative Sugar Mill presently drawing about Rs.50,000/-. Instead of maintaining his wife, he is harping on the earning capacity of the wife and so far had denied her the due maintenance. By filing this revision petition on a frivolous ground, he has intended to protract the proceedings. To curtail this sort of dilatory tactics, this Court impose costs on the revision petitioner.

9. In the result, this Criminal Revision Case is dismissed with cost of Rs.10,000/- (Rupees ten thousand only) payable to the respondent herein within a period of 15 days from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy// सत्यमेव जयते

ari Sub Assistant Registrar
To
The Judge, Family Court, Vellore.

+1 cc to Mr.R.Anbalagan, Advocate, S.R.No.20167
+1 cc to Mr.R.Anbalagan, Advocate, S.R.No.20167(14/06/2019)

Cr1.R.C.No.287 of 2019
and
Cr1.M.P.No.3304 of 2019

SV(CO)
SSM(10/04/2019).