

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C.No.1094 of 2017
and
Crl.M.P.No.10251 of 2017

Prasanna Venkatesan Petitioner/Respondent

vs.

D.Rekha Respondent/Petitioner

Petition filed under Section 397 r/w 401 of Cr.P.C. against the judgement dated 28.04.2017, passed by the Principal Sessions Judge, Salem, in Crl.A.No.98 of 2015, confirming the order dated 25.05.2015, passed in C.M.P.No.2938 of 2014 in DVOP No.92 of 2014, by the Judicial Magistrate Court, Additional Mahila Court, Salem.

For Petitioner : Mr.I.C.Vasudevan

For Respondent : Mr.R.Nalliyappan

ORDER

Challenging the judgement dated 28.04.2017, passed by the Principal Sessions Judge, Salem, in Crl.A.No.98 of 2015, the petitioner/husband is before this Court with this criminal revision case.

2.The respondent herein (wife) filed Crl.M.P.No.2938 of 2014 in D.V.O.P.No.92 of 2014, before the Judicial Magistrate, Additional Mahalir Needhimandram, Salem, seeking maintenance on the following grounds:

The respondent herein and the revision petitioner got married on 15.09.2013. While so, the family members of the revision petitioner created problem by demanding dowry; the brother of the revision petitioner misbehaved with the respondent and further they sent the respondent herein to her parents' house saying some false grounds, which caused rift in the matrimonial relationship. Admittedly, she was constrained to live in her

parents' house and file the petition seeking interim maintenance of Rs.15,000/-. The revision petitioner herein resisted the same.

3.Ultimately, the trial Court awarded maintenance in a sum of Rs.4000/- per month in favour of the wife. Being aggrieved by the same, the revision petitioner/husband filed appeal before the Principal Sessions Court, Salem. The lower appellate Court, confirmed the order passed by the learned Magistrate. Not satisfied with the said judgement of the lower appellate Court, the husband is before this Court with this revision case, raising various grounds, the crux of them would be to the effect that the Court below passed the order only on surmises and not on settled proposition of law; the Court below has not taken into consideration the fact that the respondent/wife voluntarily deserted the petitioner and refused to live with him; the Courts below are not correct in awarding a huge amount of Rs.4,000/- as interim maintenance to the respondent, without taking into consideration the income of the petitioner. As such, the revision petitioner prays for setting aside the orders passed by the Courts below.

4.Heard both sides.

5.The point for consideration is as to whether there is any infirmity or perversity in the judgement passed by the lower appellate Court and whether the same has been passed without properly appreciating the facts of the case.

6.The learned counsel for the revision petitioner, placing reliance on the grounds of revision, would develop his argument to the effect that the respondent herein-the wife of the petitioner did not live with the respondent and she stayed with her parents on her own accord. There was no cohabitation between the petitioner and the respondent. The respondent did not co-operate with the petitioner for matrimonial life. She did not take any efforts to live with the petitioner. He would also contend that it is the wife, who neglected to have cohabitation with the revision petitioner and as such, she has not made out a case before the Courts below that the husband neglected to maintain her and therefore, the husband cannot be mulcted with the liability to pay monthly maintenance. The husband has not perpetrated any cruelty on the wife and she on her own accord had chosen to stay away from the matrimonial home and live in her father's house. Finally it is contended by the learned counsel for the petitioner that the maintenance awarded is excessive and the revision petitioner is not in a position to pay such an amount to the wife.

7. Whereas, the learned counsel for the respondent/wife, by way of refuting the arguments put forth on the side of the revision petitioner, submitted that the respondent, being a wife, behaved dutifully towards the husband, but it is only due to the cruelties meted out by her in the matrimonial home, as set out in the petition, she was compelled to live separately. The Courts below considering all these facts held that the husband is bound to maintain the wife and accordingly passed the award, warranting no interference by this Court.

8. A mere perusal of the judgement of the lower Appellate Court would show that the appellate Court has considered the entire facts and circumstances of the case and held that there is no justification on the part of the husband in refusing to maintain the wife.

9. It is well settled that in petitions seeking interim maintenance, the Courts are not expected to delve deep into each and every aspect of the matrimonial dispute and dilate thereon. Only as per the settled legal proposition, the Courts below held that the wife is entitled to interim maintenance. On a careful perusal of the contentions put forth on both sides, this Court is of the view that there are allegations on both sides regarding matrimonial dispute, with which this Court is not concerned and the same would be decided in the appropriate proceedings. Even assuming that the plea of the husband that it is because of the attitude of the wife, a rift has arisen in the matrimonial relationship, in my opinion, that cannot be a ground for the husband to desert his wife and refuse to provide maintenance to her. As such, I am of the considered opinion that the approach of the Courts below is not perverse and there is no illegal exercise of jurisdiction on the part of the Courts below in awarding maintenance. Therefore, I could see no merit in the contention of the revision petitioner.

10. The trial Court, on appreciation of evidence and after taking into consideration the rival contentions raised on both sides, awarded a sum of Rs.4000/- per month towards interim maintenance. In paragraph No.10 of the judgement, it is observed by the lower appellate Court that the revision petitioner/husband is working as Assistant Professor in Hindustan College, Coimbatore and is earning a sum of Rs.40,000/- per month. The lower Appellate Court further observed that the husband possesses a Master degree in Engineering and as such, it could easily be discernible that the revision petitioner/husband, who is possessing a master degree in Engineering, could get a sizable amount and accordingly fixed the income of the revision petitioner as Rs.40,000/-per month.

11. A bare perusal of the records would go to show that

the wife is in a financial constraint and in the present day cost of living, it is obvious that a lady would not be able to live without having minimum required amount and she would be a burden to her parents. In such a case, it is the husband, who should provide maintenance to his wife. Having this principle in mind, the Courts below correctly ordered maintenance, that too, in my opinion, a meagre maintenance, which warrants no interference by this Court.

12.The lower Appellate Court, taking into consideration the legal proposition that the husband cannot wriggle out of his liability to pay maintenance to his wife and also the contention raised on the side of the wife that she was subjected to domestic violence and she was constrained to leave the matrimonial home and forced to stay with her parents, confirmed the interim maintenance of Rs.4000/- awarded by the trial Court. The said amount, in my opinion, is perfectly justified and no interference is required. Accordingly, this criminal revision case is dismissed. connected miscellaneous petition is dismissed.

13.The learned counsel for the respondent prays for a direction to the revision petitioner to pay the accrued arrears immediately to the respondent.

14.The prayer now made by the learned counsel for the respondent is a reasonable one and therefore, the revision petitioner is directed to pay the arrears of maintenance from the date of petition, within a period of four weeks from the date of receipt of copy of this order and he is also directed to pay the monthly maintenance to the respondent, on or before 5th of every English calendar month, without any default.

15.The learned counsel for the revision petitioner would pray for a direction to the trial Court to dispose of the main case within the time frame to be fixed by this Court. Considering the said prayer, the trial Court is directed to dispose of the main case within a period of four months from the date of receipt of a copy of this order.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sessions Judge, Salem

2.The Judicial Magistrate, Additional Mahila Court, Salem.

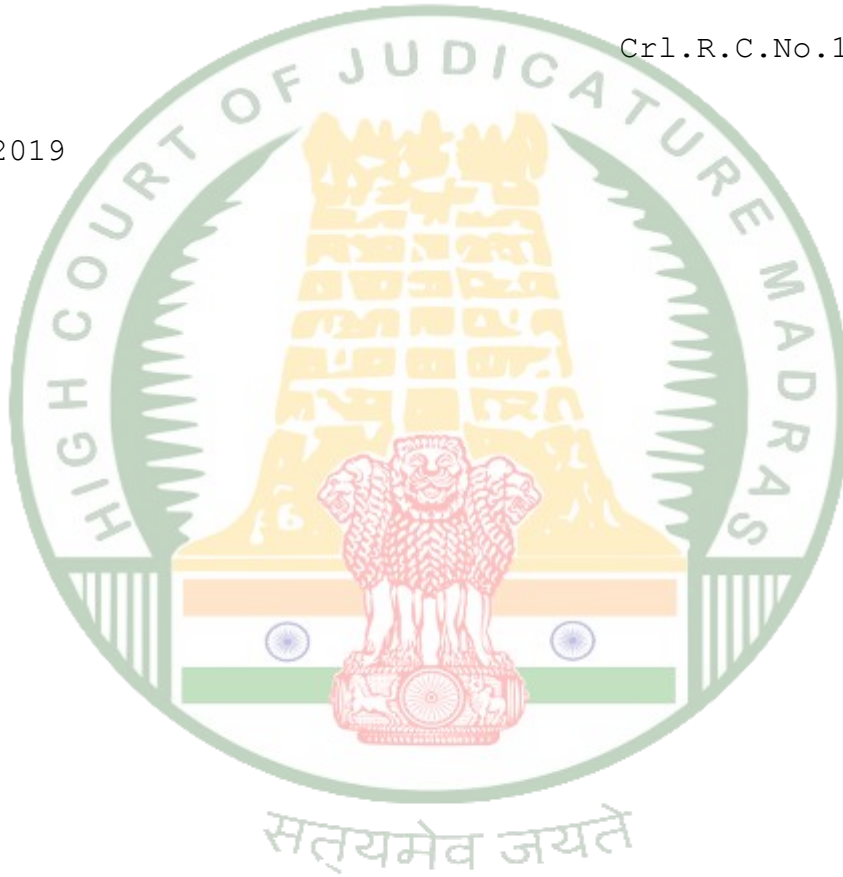
3.The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to M/s.I.C.Vasudevan, Advocate sr.no.4492

+lcc to M/s.R.Nalliyappan, Advocate sr.4133

Crl.R.C.No.1094 of 2018

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