

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:04.01.2019

Delivered on:09.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C.No.1369 of 2017

1.Mrs.Chanmougapriya

2.Minor Praveen

rep.by her mother and
next friend, the first petitioner herein

.... Petitioners/Petitioners

vs.

Arun

.... Respondent

Petition filed under Section 397 r/w 401 of Cr.P.C. against the order dated 24.08.2017, passed by the Family Court, Puducherry, in M.C.No.54 of 2012.

For Petitioners : Mr.G.Karthikeyan

For Respondent : No Appearance

O R D E R

Challenging the order dated 24.08.2017, passed by the Family Court, Puducherry, in M.C.No.54 of 2012, this criminal revision case is focussed.

2.Briefly the relevant facts, which are absolutely necessary for the disposal of this criminal revision case, would run thus:

(a) The revision petitioners filed the M.C.No.54 of 2012 before the Family Court, Puducherry as against the respondent, who being the husband of the first petitioner and father of the second petitioner, respectively, and sought a sum of Rs.10,000/- p.m. for each of them, totalling a sum of Rs.20,000/- per month towards maintenance. The respondent/husband resisted the claim. Whereupon the enquiry

was conducted.

(b) During enquiry, on the revision petitioners' side, the first petitioner-wife was examined as P.W.1 along with three others as P.Ws.2 to 4 and Exs.P1 to P16 were marked. On the side of the respondent, the respondent examined himself as R.W.1 and Exs.R1 and R2 were marked. Exs.X1 to X5 were marked as Court documents.

(c) Ultimately, the lower Court awarded maintenance of Rs.2000/- per month in favour of the first petitioner and Rs.5000/- per month in favour of the second petitioner payable by the respondent herein.

3. Being dissatisfied with the said meagre awarding of maintenance by the lower Court, this revision case is focussed on various grounds, the gist of them would run thus:-

(i) Ignoring the relevant evidence available on record, viz., the evidence of R.W.2-the auto driver, whose evidence is to the effect that he is receiving Rs.1000/- per month from the first petitioner to take the second petitioner-the minor child to the school regularly, the lower Court simply awarded totally a sum of Rs.7,000 p.m., in favour of the first and second petitioners, which requires to be enhanced.

(ii) The lower Court failed to take into account the education expenses of the second petitioner, which is borne by the first petitioner and the lower Court has also not taken into consideration the school fees receipts and the medical records, showing the expenses incurred for the second petitioner.

(iii) The Family Court has also failed to take note of the fact that the respondent's mother is receiving pension and as such, the defence taken by the respondent that he is taking care of his mother only out of his income is not true.

4. It is the contention of the learned counsel appearing for the petitioners that the maintenance awarded by the trial Court is too low and with the said amount, in the present day cost of living, the wife and the minor child cannot lead a decent life.

5. Per contra, it is the contention of the learned counsel for the respondent that the Family Court, without analysing as to who is responsible for the cleavage in the matrimonial relationship between the first petitioner/wife and the respondent/husband, has simply awarded exorbitant amount towards maintenance.

6. The learned counsel for the respondent would invite

the attention of this Court to Ex.X2-the certificate issued by the employer of the respondent and advance his argument to the effect that out of his income, the respondent has to meet out the basic necessities and medical expenses of his mother and the learned counsel would further contend that the respondent is spending Rs.5000/- to Rs.10,000/- for his mother towards medical expenses and in such a case, he cannot be burdened heavily to pay maintenance over and above a sum of Rs.7,000/- per month, cumulatively, in favour of both the petitioners as ordered by the Court below.

7. A plain reading of the judgement of the Family Court as well as the records would disclose that the first revision petitioner and the respondent got married on 29.01.2001, as per the Hindu Rites and Customs. Out of their wed lock, the first petitioner gave birth to the second petitioner, on 28.05.2002. There are rival contentions raised by both parties accusing each other for the cleavage in the matrimonial relationship, with which this Court is not concerned.

8.It is well settled proposition that in a summary proceedings under Section 125 of Cr.,P.C., the larger issues relating to who is absolutely responsible for the rift in the matrimonial relationship could not be decided.

9.In summary proceedings under Section 125 of Cr.P.C. the Court has to see as to whether there is negligence on the part of the husband in maintaining the wife and child. In the case on hand, the husband would say that he was not responsible for the rift, as the wife, on her own accord, left the matrimonial home. However, the Family Court felt that there is no substance, prima facie, in the contention of the husband that the wife, on her own accord left the matrimonial home, as it is the husband, who filed the divorce petition. Without any rhyme or reason the petitioners could have no reason to live away from the husband and seek for maintenance. Considering the fact that the Family Court, on factual basis arrived at the conclusion that the husband has to pay maintenance, this Court is of the opinion that this is not a fit case for interference in the revision.

10.Regarding the quantum is concerned, I would like to point out that in this case the respondent/husband's liability to pay maintenance to the revision petitioners is beyond question. The respondent would contend that as per Exs.X2 and X3, his gross salary is Rs.44,448/- as of March 2014 and the first petitioner is working in Puducherry State Health Mission, Puducherry and she is also earning a sum of Rs.9317/- per month, as is evident from Ex.X5 and hence, he cannot be asked to part with more than Rs.7000/- totally towards maintenance as ordered

by the lower Court.

11.I cannot countenance and uphold the argument put forth by the learned counsel for the respondent for the reason that it is a settled principle of law that a male should part with at least 2/3rd of his income in favour of his wife and child and he cannot appropriate more for himself and leave his wife and child in the lurch and make them to suffer in a cash strapped situation.

12.A strong case has been put forth on behalf of the petitioners to the effect that the second petitioner is studying in a school and the first petitioner alone is taking care of the child and the school expenses and medical expenses of the second petitioner are borne out by the first petitioner. The respondent is working in the Government General Hospital, Thirunallar as Radiographer and is drawing a handsome money. The mother of the respondent is getting pension and suppressing the said fact, the respondent claimed that he is taking care of his mother. The respondent is bound to maintain the first petitioner as a dutiful husband and the second petitioner as a father. It is his bounden duty to provide all basic needs to the petitioners, being wife and child. It is the contention of the petitioners that the first petitioner is in need of Rs.10,000/- for her food, clothing and shelter and a sum of Rs.10,000/- per month is required for the minor child for his food, clothing, shelter, medical and educational expenses.

13.I could see considerable force in the contention raised by the petitioners. Even though it is contended on behalf of the respondent/husband that the first petitioner is also employed and getting a decent amount, the same cannot be a ground to deny maintenance to the wife and child. It is trite proposition of law that the wife and children are entitled to live on par with the status of the husband/father. In this case, though it is contended on behalf of the respondent that the respondent has to take care of his ailing mother and is spending a sizable amount towards her medical expenses, as rightly contended by the learned counsel for the petitioners, the mother of the respondent is a pensioner and she is also getting some money, which fact cannot be belittled.

14.Be that as it may. As is evident from Ex.P8-the pay certificate of the respondent, the gross salary of the respondent for the month of February 2016 was Rs.53,606/- and 2/3rd of it would come to around Rs.34,000/-. But, totally only a sum of Rs.7000/-p.m. was awarded as maintenance by the lower court, warranting interference by this Court, as the discretion exercised by the Family Court is perverse and quite antithetical

to the well established principles of law, as highlighted supra. It is quite obvious that in the wake of present day cost of living, a lady with her child would not be able to live without having at least a sum of Rs.500/- per day and accordingly, if it is calculated it would come to Rs.15,000/-p.m.

In fine, this Criminal Revision Petition is allowed in part and the order passed in M.C.No.54 of 2012, by the Court below, is modified as follows:

The first revision petitioner, viz., Mrs.Chanmougapriya is entitled to get Rs.5,000/-(Rupees Five thousand only) as monthly maintenance and the second petitioner-minor child Praveen is entitled to get Rs.7,500/- (Rupees Seven Thousand Five Hundred only). The respondent/husband is directed to pay monthly maintenance, as ordered in this Petition, to the wife and child on or before 5th of every English Calendar month. The respondent is also directed to pay the arrears of maintenance, calculated at Rs.12,500/- (Rupees Twelve Thousand Five Hundred) from the date of petition, within a period of eight weeks from the date of receipt of copy of this order. On such deposit, the first respondent/wife is permitted to withdraw the same.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Msk

To

The Family Judge, Puducherry,

+1cc to Mr.G.Karthikeyan, Advocate, S.R.No.2238

Cr1.R.C.No.1369 of 2017

NMI (CO)
CS/07/02/2019

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