

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.280 of 2017
and
Crl.MP.No.2826 of 2017

T.Pirabu ...Petitioner/Respondent

Vs.

P.Deepa ...Respondent/Petitioner

Criminal Revision Case filed under Section 397 and 401 Criminal Procedure Code to set aside the order dated 19.12.2016 passed in M.C.No.2 of 2006 on the file of Family Court, Erode and allow the petition.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.D.R.Arun Kumar

O R D E R

This petition has been filed seeking to set aside the order dated 19.12.2016 passed in M.C.No.2 of 2006 by the Family Court, Erode.

2. For the sake of convenience, the petitioner / husband and the respondent / wife are referred as "husband" and "wife", respectively.

3. The brief facts of the case:-

The wife had filed a petition in M.C.No.2 of 2016 for maintenance. The marriage between her and the husband took place on 22.08.2010 at Periyannayan Palaiyam, Nathan Thirumana Mandabam and out of the said wedlock, a child named Sairam was born on 21.03.2012. At the time of marriage, 30 sovereign of jewel and seethana articles were given to the wife. The husband was working as an auditor in the electricity board and he had mortgaged the jewels of his wife and obtained loan and purchased the housing property and the property was registered in his name. Initially, the husband had been affectionate with his wife and after the Valakapu, due to the advise of his sister and bother-in-law, he had not visited his wife. When the wife had gone to her parental home for delivery, the husband developed bad habits and become

alcoholic. After the birth of the child, the husband had promised to take his wife and later had not taken her back to the matrimonial home. Originally, the husband filed a petition in H.M.O.P.No.408 of 2012 seeking for divorce and the wife had filed a petition for maintenance in M.C.No.2 of 2016 before the Family Court, Erode. Thereafter, a compromise was effected and both the cases were withdrawn. Subsequently, the husband got promoted and after one year husband once again filed a petition in H.M.O.P.No.516 of 2015 for divorce. While so, the wife had sent a notice to the husband on 30.04.2013 contending that he had not taken care of her and her child. The wife further contended that the husband was working as an Audit Officer in the Tamil Nadu Electricity Board and that he was earning a monthly salary of Rs.35,000/- and also by other sources earning a total amount of Rs.50,000/-. Hence, the wife had claimed Rs.15,000/- for her and her child.

4. The husband had filed a counter stating that the wife had not behaved properly with him and that she committed cruelty on him and she has given various complaints against him and further contended that he is paying an amount of Rs.2,000/- per month as maintenance for his child and also he was spending money for the treatment of his father who is affected by Cancer and also taking care of his brother, who is mentally retarded. Further, he had contended that the wife was working as PRO and earning monthly salary of Rs.25,000/-. It was further contended that after deduction, the husband was receiving only an amount of Rs.3,010/- per month, thereby, the husband prayed for dismissal of the petition.

5. The trial Court, after examining both the parties, fixed the maintenance at Rs.5,000/- for the child towards food, clothing and other expenses and awarded an amount of Rs.2,000/- to the wife. The present revision has been filed against the order.

6. The learned counsel for the petitioner/husband would submit though the husband is working as an Auditor in the Electricity Board and drawing a salary of Rs.30,000/-, he was paying Rs.2,000/- for the maintenance of the son and further spending for the treatment of his father who was affected by cancer and taking care of his mentally retarded brother. Further after all the deductions he is getting only Rs.3,010/-. The trial Court did not take all the aspects into consideration. He would further submit that the wife was working as PRO in Private college and she was earning an amount of Rs.25,000/- per month. He would further submit that the order of trial Court granting maintenance of Rs.2,000/- for the wife and Rs.5,000/- for child is erroneous.

7. Per contra, the learned counsel for the respondent would submit that the husband was working as Assistant Administrative Officer in Tamil Nadu Electricity Board and the trial court, taking into consideration, the evidence let in

has fixed the salary at Rs.41,260/- and after taking into consideration the deduction, had arrived at a conclusion that the monthly income of the husband is Rs.30,000/- per month and based on that has rightly awarded the maintenance. He would further submit that the wife was working as a PRO before marriage and after marriage, she has resigned the job and as on date she is without employment and no evidence was let in by the husband that the wife was getting monthly income of Rs.25,000/-. The wife and the child cannot be allowed to suffer in destitution and vagrancy.

8. Heard both counsels and gone through the materials on record.

9. Admittedly the husband is working as Assistant Administrative Officer in the Tamil Nadu Electricity Board and the trial Court finding that he is working in the Electricity Board and based on the salary certificate dated 22.12.2015, had fixed the monthly salary of the husband at Rs.41,256/- and after taking into consideration the deduction, has fixed the monthly income of the husband at Rs.30,000/- per month and based on the monthly income, fixed the maintenance at Rs.2,000/- per month for the wife and Rs.5,000/- per month for the child. In the opinion of this Court, the amount of monthly maintenance awarded is reasonable taking into consideration the present cost of living.

10. I do not find any infirmity in the order passed by the Court below. The trial Court has rightly awarded the maintenance. Accordingly, the Criminal Revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

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To

The Judge,
Family Court, Erode.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.

Cr1.RC.No.280 of 2017
and
Cr1.MP.No.2826 of 2017

NMI (CO)

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