

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.No.932 of 2017

V.Sundarraaj

... Petitioner/Respondent

Vs.

Venmathi

... Respondent/Petitioner

PRAYER: This Criminal Revision Petition has been filed, under Sections 397 and 401 of Cr.P.C., to set aside the order dated 02.03.2017, made in M.C.No.154/2012, by the II Additional Family Court, Chennai.

For Petitioner : Mr.Muthukumar
for M/s.DMH Partners

For Respondent : Mr.C.R.Malarvannan
appointed as Amicus Curiae.

ORDER

- 1.This Criminal Revision Petition has been filed by the husband against the order dated 02.03.2017, passed in M.C.No.154/2012, by the II Additional Family Court, Chennai, directing the revision petitioner/husband to pay a sum of Rs.1,500/- per month as maintenance to his wife from the date of the petition viz., 02.04.2012.
- 2.For the sake of convenience, the parties are here to refer as husband and wife.
- 3.The respondent/wife had filed M.C.No.154/2012, stating that she is the legally wedded wife and that the marriage was solemnised on 12.11.1979 and the marriage was registered with the Marriage Registrar, North Madras, vide Reg.No.777/1979 and after the marriage, they set up their family at the husband's house at No.7, Model School Road, Thousand Light, Chennai-6 and out of the wedlock, two children (one boy and one girl) were born to them. The further contention of the wife is that her husband is an auto driver owning auto rickshaw and earning income from the auto rickshaw and he was also getting rental income and that he used to frequently quarrel with wife and

finally driven her and her children out of the matrimonial house some ten years ago. That the son and daughter got married and they are living separately and that since the wife was having no income to maintain herself, she had demanded monthly maintenance from the husband and she had further contended that the husband was having monthly income of Rs.20,000/- per month and thereby, she had filed the maintenance case, claiming an amount of Rs.7,500/- per month as maintenance for her livelihood.

4.The husband had filed a counter, stating that the marriage between him and his wife was solemnised on 12.11.1979 and two children were born to them viz., one boy and one girl and that another male child was still born. He had later come to know that the wife developed illegal relationship with one Jayapal and despite his advice, to stay away from Jayapal, she refused to sever the relationship and continued to live with the said Jayapal and refused to live with him, later, they mutually decided to separate and later by the release deed, dated 12.08.1990, they got separated. The husband had contended that his wife had taken her daughter along with her to live with Jayapal and that the husband was taking care of his son and they were living separately. At the time of separation, the wife had taken all her belongings and that in the said release deed, dated 12.08.1990, his wife had specifically admitted that she is living with Jayapal and it was mutually agreed that either party will not interfere in the life of the other. The wife had agreed to have no relationship with the boy child and the husband had agreed to have no relationship with his daughter as per the release deed. The husband had further contended that the wife had voluntarily left the matrimonial home on account of an illegal relationship with the said Jayapal and that she was living adultery and that she had without any sufficient reason refused to live with him and that since they were living separately by mutual consent, the wife is not entitled to maintenance from him.

5.Before the Trial Court, the respondent/wife had examined herself as P.W.1 and Exs.P1 to P4 were marked. Ex.P1 is the copy of marriage registration certificate, Ex.P2 is the Gas receipt in the name of the husband, Ex.P3 is the Copy of the birth certificate of the son Pradeep Kumar, Ex.P4 is the Copy of the birth certificate of the daughter Vimalakumari and Ex.P5 is the Copy of the RC Book of the auto rickshaw in the name of the husband. The husband had examined himself as R.W.1 and Exs.R1 to R4 were marked. Ex.R1 is the Copy of the Release Deed, Ex.R2 is the Copy of the receipt for a sum of Rs.4,000/-, Ex.R3 is the Invitation Card in respect of Puberty function of Vimalakumari, daughter of both parties wherein, the name of Jayapal was shown as the father of Vimalakumari and husband of

Venmathi and Ex.R4 is the Copy of the Voter card where the name of Venmathi has been stated as wife of Jayapal.

- 6.The Trial Court, after hearing both sides, allowed the petition and directed the petitioner to pay a sum of Rs.1,500/- per month as maintenance to be paid on or before 5th of every English calendar month. Against which, the present criminal revision petition has been filed.
- 7.The matter was listed for hearing on 04.10.2019 and again on 18.10.2019 since, there was no representation by the counsel for the respondent, this Court had posted the matter under the caption "for orders" on 22.10.2019. Even on 22.10.2019, there was no representation and thereby, this Court appointed Mr.C.R.Malarvannan, learned counsel to represent the respondent and assist the Court.
- 8.The learned counsel for the revision petitioner/husband would submit that the Trial Court erred in allowing the petition despite the fact that the parties have separated by mutual consent and that the wife was living in adultery and that she had refused to live with the husband without any sufficient cause. The petitioner/husband by categorical evidence by marking Exs.R1 to R5 has proved that the respondent/wife had refused to live with her husband and that they were living separately by mutual consent and further he has also let in the evidence to prove that the respondent/wife was living with one Jayapal. He would submit that Ex.R1 is the Copy of the release deed entered in to between the parties, dated 12.08.1990, wherein, the respondent/wife had admitted that she had developed relationship with one Jayapal and that they have married and they were living as husband and wife. Further, the parties have agreed that the girl child will be with the mother and the male child will be with the father and in the very same deed, the said Jayapal has also signed along with the revision petitioner/husband and the respondent/wife as a witness and that at the time of separation by mutual consent an amount of Rs.4,000/- has been given by the revision petitioner as compensation to the respondent/wife. The receipt for Rs.4,000/- had been marked as Ex.R2. Later, the said Jayapal and the respondent/wife were living together as husband and wife and that the Puberty function had been conducted for girl child on 04.12.1994 and that an Invitation Card has been printed by the wife, wherein, she has identified her as the wife of Jayapal. Ex.R4 is the Voter Identity Card of the respondent/wife wherein, her husband name is shown as Jayapal (Voter Identity Card had been issued in respect of Anna Nagar Constituency in Serial No.1206, dated 08.02.2016). The revision petitioner/husband by sufficient documents proved that the respondent/wife without sufficient reason had refused to live

with the revision petitioner and that they are living separately by mutual consent and that she was leading an adulterous life. The Trial Court, erred in disbelieving the document stating that it would be unsafe to rely upon the documents without being corroborated by examining any independent witness connected to the said documents.

9. The learned counsel for the revision petitioner/husband would further submit that other than stating that Exs.R1 to R3 have been fabricated for the purpose of the case, no other valid cross examination or suggestion has been made by the respondent/wife to disprove the documents and that the Trial Court without considering the aspect of the respondent/wife's refusal to live with sufficient cause and that she was living separately, pursuant to a mutual consent, had passed an order, granting maintenance, holding that subsequently, the revision petitioner got married and living with a family and thereby, he would seek for setting aside the order.
10. The learned Amicus curiae appearing for the respondent would submit that the Trial Court had refused to believe Exs.R1 to R3 and further holding that since, no person connected with the receipt under Ex.R2 was examined had disbelieved the case of the revision petitioner/husband and had passed the order granting maintenance.
11. This Court heard the learned counsel on both sides and perused the materials placed on record.
12. The marriage between the parties is admitted. The husband had taken a plea that his wife refused to live with him and after entering into the deed of mutual consent went to live with Jayapal. The release deed has been marked as Ex.R1. In the very same deed, the said Jayapal has also signed as a party. The receipt for giving compensation of Rs.4,000/- has been marked as Ex.R2 and the Invitation for Puberty function of the daughter is marked as Ex.R3. In Ex.R3, the wife had identified herself as the wife of Jayapal. Further, the revision petitioner/husband had marked the voter identification card of the wife where her husband is shown as Jayapal. Before this Court, the husband has filed certain additional documents in the form of typeset, viz., the Family Card of Jayapal wherein the name of the respondent has been shown the wife of Jayapal and her children Pradeep Kumar and Vimala Kumari have been shown as their children. The Transfer Certificate of his daughter Vimala Kumari is also filed wherein the father's name is shown as Jayapal, the ESI Card of Vimala Kumari has been filed wherein father's name is shown as Jayapal and mother's name is shown as Venmathi. The learned counsel would submit that when the revision petitioner/husband had proved that the

respondent/wife had refused to live without sufficient cause and that she was living with some other person, the Trial Court erred in awarding maintenance.

13. In the opinion of this Court, the revision petitioner/husband by way of letting abundant evidence has proved that the respondent/wife had refused to live without sufficient reason and thereafter, separated by mutual consent and living in adultery and thereby, she is not entitled to maintenance. As per Section 125 (4) of Cr.P.C., No wife shall be entitled to receive an allowance from her husband under this Section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

14. In view of the above discussion, the Criminal Revision is allowed and the order dated 02.03.2017, made in M.C.No.154/2012, by the II Additional Family Court, Chennai granting maintenance of Rs.1,500/- per month to the respondent/wife is set aside.

15. Before parting with the matter, this Court place it on record, the commendable service rendered by Mr.C.R.Malarvannan, learned counsel appointed as Amicus Curiae, who had assisted this Court.

Sd/-

Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

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To:

1. The II Additional Principal Judge,
II Additional Family Court, Chennai.

2. The Public Prosecutor, High Court, Chennai.

Copy to: Mr.C.R.Malarvannan, No.12, Law Chambers,
High Court, Madras.

+1CC to Mr.C.R.Malarvannan, SR.No.93086.

Cr1.RC.No.932 of 2017

VGI (CO)

CSR: 10/01/2020