

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

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

Crl.RC.No.938 of 2017
and
Crl.M.P.No.8790 of 2017

R.Srinivasan

...Petitioner

Vs.

V.Hemapriya

....Respondent

Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the order passed in M.C.No.289 of 2014 dated 17.03.2017 on the file of the III Additional Family Court, Chennai.

For Petitioner : Mr.M.Thamihavel

For Respondent : Mr.S.Kartik

O R D E R

This revision petition has been filed seeking to set aside the order passed in M.C.No.289 of 2014 dated 17.03.2017 by the III Additional Family Court, Chennai, directing the revision petitioner / husband to pay a sum of Rs.5,000/- per month to the respondent / wife from the date of petition namely 08.07.2014.

2. For the sake of convenience, the parties herein are referred to as husband and wife.

3. The brief facts of the case is that the marriage between the parties was solemnized on 18.02.2008 at T.K.A.Thirumana Maligai, Villivakam, Chennai - 49 as per Hindu rites and customs. Later, the husband met with an accident on 19.05.2008, since the husband house was far away from the hospital, he started to stay in the parents house of the wife. On 25.07.2008, the husband went to job and came to home very late, thereafter, the husband behaved in a different attitude towards the wife, which resulted in the matrimonial dispute. Due to the misbehavior of the husband, the family members of the wife got mental depression. While so, the husband filed a

petition in O.P.No.1237 of 2009 before the Principal Family Court, Chennai for divorce and the wife filed a petition in O.P.No.1903 of 2010 on the file of Principal Family Court, Chennai for restitution of conjugal rights. The Principal Family Court, Chennai allowed the petition for restitution of conjugal rights and dismissed the divorce petition filed by the husband. In spite of several request, the husband did not join the wife to lead a matrimonial life. Contending that the husband was employed in a private concern and earning an amount of Rs.15,000/- and that he is having house property in Manivakkam and getting rental income of Rs.20,000/- per month, the wife had filed a petition under Section 125 of the Cr.P.C seeking for payment of monthly maintenance of Rs.20,000/- per month.

4. The husband filed a counter denying that he is employed in the private concern and earning Rs.15,000/- per month and also denied the averment of wife that he is having property at Manivakkam and getting rental income of Rs.20,000/- per month. Further, he had contended that he was pursuing his B.Tech Course, for which his parents are spending money and that he was depending only on his parents who are taking care of his daily needs. Further, it had been contended that the wife is a B.Com, D.C.A graduate and earning Rs.10,000/- per month.

5. On the side of the wife, she examined herself as P.W.1 and marked Exs.P.1 to P.3. Ex.P.1 is the Marriage Invitation of the petitioner and respondent; Ex.P.2 is the Marriage Photo of the petitioner and respondent; and Ex.P.3 is the copy of the order passed in O.P.No.1903 of 2010 filed by the wife for restitution of conjugal rights. On the side of the husband, the husband examined himself as R.W.1 and no document was marked.

6. The trial Court, found that the husband had completed Diploma in Mechanical Engineering and he was working as a trainee in Simpson company during the marriage and having found that the Family Court had allowed the petition for restitution of conjugal rights found that the husband is bound to give separate maintenance to the wife to avoid vagrancy and awarded an amount of Rs.5,000/- per month to be paid as maintenance to the wife. Against which, the present revision has been filed.

7. The learned counsel for the petitioner / husband would submit that the husband at the time of marriage was working as a trainee in Simpson Company at Perambur and as on date, he is without any employment and he himself is being taken care by his parents. He would submit that the trial Court without taking into consideration that the husband is without employment has erroneously passed an order to pay Rs.5,000/-

per month, which is abnormal. He would further submit that no evidence is produced to show that the husband was earning Rs.30,000/- per month.

8. Per contra, learned counsel for the wife would submit that the marriage between the parties took place on 18.02.2008 and at the time of marriage the husband was holding a Diploma in Mechanical Engineering and was a trainee as on today, the husband has completed B.Tech in Mechanical Engineering and he is employed in Simpson Company and he has refused to maintain the wife. He would further submit that the husband has filed a petition for divorce and it was dismissed, whereas, the petition filed by the wife for restitution of conjugal rights has been allowed. Despite several requests, the husband is not willing to live with the wife and also not paying any maintenance.

9. Heard both sides and perused the materials on record.

10. The marriage between the parties is not disputed. The Family Court, Chennai has dismissed the petition for divorce filed by the husband and allowed the petition for restitution of conjugal rights. Admittedly, the husband was a diploma holder in Mechanical Engineer at the time of marriage and as on date, he completed B.Tech Course. The wife had claimed maintenance at the rate of Rs.20,000/- per month and she has also proved that she is unable to maintain herself. The trial Court after hearing both sides and taking into consideration the material produced by both sides had awarded an amount of Rs.5,000/- per month to the respondent / wife from the date of petition i.e., 08.07.2014.

11. The Hon'ble Apex Court in 2015 (5) SCC 705 [Shamima Farooqui Vs. Shahid Khan], has held as follows:-

"14.Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be

passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.

15. While determining the quantum of maintenance, this Court in *Jabsir Kaur Sehgal v. District Judge Dehradun & Ors.*[13] has held as follows:-

"The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

16. Grant of maintenance to wife has been perceived as a measure of social justice by this Court. In *Chaturbhuj v. Sita Bai*[14], it has been ruled that:-

"6.....Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Captain Ramesh Chander Kaushal v. Veena Kaushal*[15] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat*[16]."

17. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to

maintain the wife due to financial constraints as long as he is capable of earning.

18. In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in Chander Prakash Bodhraj v. Shila Rani Chander Prakash[17] wherein it has been opined thus:-

".....an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him."

19. From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance."

12. In the opinion of this Court, the husband has only made bald excuses which cannot be accepted in law. The husband is healthy and admittedly he has completed B.Tech Course. An able bodied men has to be presumed to be capable of earning sufficient money so as to be enable to reasonably to maintain his wife and he cannot be heard to say that he is not in a position to earn enough to maintain his wife according to the family standard.

13. The trial Court has awarded maintenance at the rate of Rs.5,000/- per month. The amount of maintenance is very nominal. The wife has not filed any petition seeking enhancement.

14. I do not find any infirmity in the order passed by the Court below. Accordingly the present Criminal Revision Case stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bri

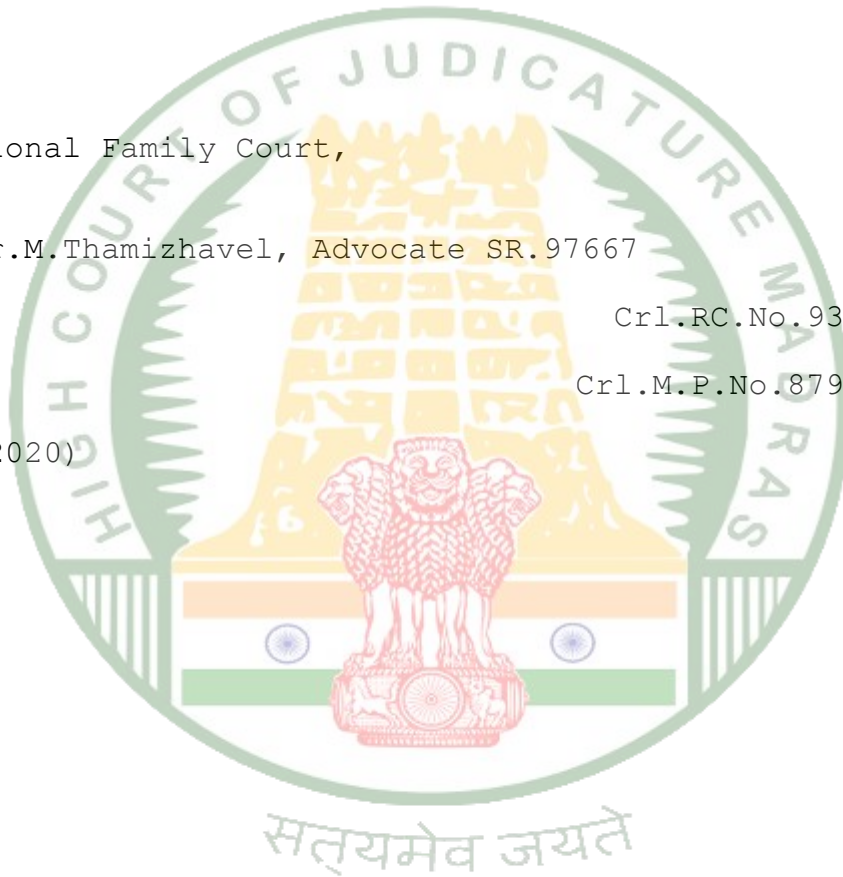
To

The Judge,
III Additional Family Court,
Chennai.

+1cc to Mr.M.Thamizhavel, Advocate SR.97667

NR(CO)
CB(10/02/2020)

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