

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.26729 of 2017

and

CRL.M.P.No.15387 of 2017

Amuthavalli

...Petitioner/Petitioner

Vs.

Pandiyan

...Respondent/Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed in Criminal Revision Petition No.40 of 2015 on the file of the Principal Sessions Judge, Salem dated 05.07.2017 reversing the order passed in M.C.No.5 of 2013 on the file of the Judicial Magistrate No.2, Attur dated 13.04.2015.

For Petitioner : Mr. V.Elangovan

For Respondent : Mr. Nalliyappan

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below allowing the revision petition filed by the respondent and thereby, setting aside the order of the trial Court which granted maintenance in favour of the petitioner.

2. The petitioner is the wife of the respondent. The petitioner filed a maintenance petition under Section 125 of Cr.P.C claiming for monthly maintenance from the respondent. The respondent primarily took the defence of adultery against the petitioner on the ground that she is living with one Govindan and therefore, she is not entitled to claim maintenance. The trial Court on appreciation of the entire materials placed before it, came to a conclusion that the adulterous life alleged to have been lead by the petitioner has not been proved beyond reasonable doubt and therefore, thought it fit to fix a monthly maintenance of a sum of Rs.5000/- by the respondent.

3. The respondent husband aggrieved by the said order, filed C.R.P No.40 of 2015 before the Principal Sessions Judge, Salem. The revision Court after analysing the entire materials available on record allowed the revision petition mainly on the ground that the preponderance of probabilities establishes the fact that the petitioner is living in adultery with one Govindan and therefore, she is not entitled to claim maintenance from the respondent.

4. The learned counsel for the petitioner submitted that there was absolutely no evidence before the Court to prove that the petitioner is living in adultery with Govindan. The learned counsel brought to the notice of this Court the findings of the trial Court in that regard wherein the trial Court found that there is no clear evidence to show that the petitioner lead adulterous life. The learned counsel for the petitioner further developed his argument submitting that the revision Court was swayed by the evidence of RW4 who was a vegetable hawker and who deposed as if she went to the house of one Govindan and they were living as husband and wife. The learned counsel submitted that a vegetable hawker who has visited the house once cannot be permitted to speak about the relationship of two persons and he was a rank outsider in-so-far-as this case is concerned. Therefore, the learned counsel submitted that the order of the revision Court requires interference and the order of the trial Court must be sustained.

5. Per contra, the learned counsel for the respondent submitted that it is unusual for the petitioner to live alone as a lessee in the house of one Govindan. This coupled with the evidence of RW4 which has been corroborated by the evidence of RW2 and RW3 and Ex.P4 which is the ration card, it can be reasonably presumed that the petitioner is living with the said Govindan and therefore, the revisional Court was justified in coming to such a conclusion. The learned counsel further submitted that since the petitioner is leading an adulterous life, she is not entitled to receive maintenance and the same is a bar under the provisions of Section 125 of Cr.P.C.

6. This Court has carefully considered the submissions made on either side.

7. This Court has to remind itself that it is sitting in exercise of its jurisdiction under Section 482 of Cr.P.C and there is a very limited scope for interference against the order of the revisional Court and the Hon'ble Supreme Court, time and again has held that the High Court exercising its jurisdiction under Section 482 of Cr.P.C should not exercise it as a second revision since the same is barred under Section 397(3) of Cr.P.C. The Supreme Court has made it abundantly clear that the Court can exercise its jurisdiction only after it finds that there is an abuse of process of court or for the purpose of

securing the ends of justice.

8. There is a factual finding given by the revision Court based on the evidence available on record. The sufficiency or other wise of the evidence cannot be gone into by this Court unless the finding is perverse and not based on any evidence. The revision Court has given a categorical finding based on the evidence of RW4 corroborated by the evidence of RW2 and RW2 read along with Ex.P4 ration card.

9. It is very unusual for the petitioner to be living in a leased premises. The petitioner is seeking for maintenance on the ground that she is not able to maintain herself. Therefore, it defies logic when the petitioner chooses to live alone in a leased premises by paying monthly rent. The normal course to conduct would be for the petitioner to live with her parents. Section 114 of the Indian Evidence Act clearly enables a Court to presume the existence of a fact having regard being had to the common course of natural events and human conduct. This coupled with the definition of the term "proved" under the Evidence Act which says that a fact is said to be proved when, after considering the matters placed before the Court, the Court believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon a supposition that it exists. Therefore, the level of supposition that is given to the Court for presuming the existence of a fact is the level to which a prudent man under similar circumstances, would consider the existence of the fact.

10. If this test is applied to the facts of the present case, this Court does not find anything wrong in the revision Court coming to the conclusion that the petitioner is living in adultery with one Govindan. Therefore, this Court cannot in exercise of its jurisdiction under Section 482 of Cr.P.C interfere with the order of the revision Court.

11. In the result, the order of the revision Court made in C.R.P. No.40 of 2015 dated 05.07.2017 is sustained and this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

uma

To

1. The Principal Sessions Judge,
Salem

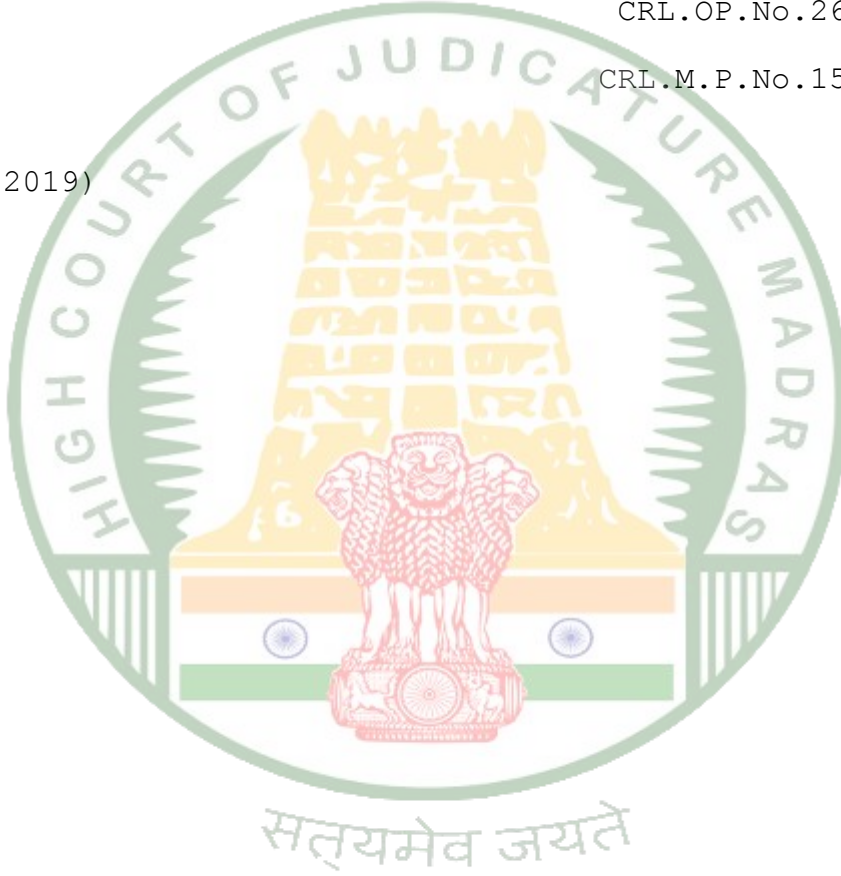
2. The Judicial Magistrate No.II,
Attur.

+1cc to Mr.E.Nalliyappan, Advocate SR.No.48496

+1cc to Mr.S.Doraisamy, Advocate SR.No.48420

CRL.OP.No.26729 of 2017
and
CRL.M.P.No.15387 of 2017

RSI (CO)
GMY (05/07/2019)



WEB COPY