

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.08.2019
CORAM
THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.RC.Nos.1330 & 1364 of 2018

Mr.Narpat Chand Lodha ...Petitioner/Accused in both cases

Vs

Mrs.Mamta Narpat Respondent/Complainant
in both cases

Prayer in Crl.R.C.No.1364 of 2018 Criminal Revision is filed under Section 397 r/w 401 of Code of Criminal Procedure, to call for the records in respect of the order passed by the learned XIX Additional City Civil and Sessions Judge in Crl.A.No.151 of 2016 dated 19.03.2018 by reversing the order passed by the learned VIII Metropolitan Magistrate in D.V.C.No.16 of 2014 dated 05.04.2016 and set aside the same.

Prayer in Crl.R.C.No.1330 of 2018 Criminal Revision is filed under Section 397 r/w 401 of Code of Criminal Procedure, to call for the records in respect of the order passed by the learned XIX Additional City Civil and Sessions Judge in Crl.A.No.155 of 2017 dated 19.03.2018 by dismissing the appeal and enhancing the maintenance order passed in D.V.C.No.16 of 2014 dated 05.04.2016 and set aside the same.

For Petitioner :Mr.AR.L.Sundaresan Senior counsel
in both cases for M/s.S.Thiruvengadam
For Respondent : Mr.M.L.Joseph
in both cases

COMMON ORDER

The revision petitioner is the husband and the respondent is the wife. The respondent filed a complaint before the jurisdictional police station under Domestic Violence Act. The case was registered before the learned VIII Metropolitan Magistrate, George Town, Chennai, in D.V.C.No.16 of 2014. The VIII Metropolitan Magistrate, after hearing arguments on either side and awarded a sum of Rs.20,000/- towards maintenance. Challenging the said order, the wife filed a petition for enhancing the maintenance and the husband also filed the petition for reducing the maintenance amount. The learned XIX

Additional Sessions Judge, Chennai, enhanced the amount from Rs.20,000/- per month to Rs.30,000/- per month towards the maintenance filed by the wife and dismissed the petition filed by the husband. Challenging the said order the husband filed these revisions before this Court.

2 The learned Senior counsel for the petitioner would submit that there is no property stands in the name of the revision petitioner. The properties are lying in the name of the company, he was working as only an employee and getting monthly salary. The learned VIII Metropolitan Magistrate failed to consider these aspects and awarded a sum of Rs.20,000/- even without ascertaining the actual income of the revision petitioner. The appellate Court also failed to consider these aspect and the revision petitioner does not have any property of his own and also have no source of income, which warrants interference by this Court.

3 The learned counsel for the respondent would submit that the revision petitioner himself admitted that he was having monthly income even paying the school fees and also the maintenance. The petitioner himself admitted that during his cross examination he had bank account that he has not produced the account statement. He obtained a loan from the Indian Bank that was not repaid the action was taken by the bank authorities, this fact was suppressed by the revision petitioner. The revision petitioner having a house and properties only in the joined name, he also getting some interest over the said property. In order to avoid paying the maintenance to respondent/wife the petitioner had convinced all the members of the family to state that the revision petitioner is only an employee of the company and he is getting a salary of Rs.30,000/-per month. Both the Courts have found that the petitioner is having sufficient source of income and neglected to maintain his wife. Hence, the appellate Court dismissed the appeal filed by the petitioner and enhanced the maintenance amount from Rs.20,000/-per month to Rs.30,000/- per month the same is only a reasonable amount, there is no need to interfere with the judgment of both the Courts below.

4 Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

5 Admittedly in this case, the revision petitioner is the husband and the respondent is his wife. Due to the misunderstanding between them the wife gave complaint to the

Jurisdictional Police Station. Since the relationship of the parties are not in dispute and out of their wed lock they blessed with one female child on 24.10.2007. Due to some family dispute the wife has left from matrimonial home and also the learned counsel for the revision petitioner would submit that there is no source of income and also the house is not in the name of this revision petitioner, it is only in the name of his brothers. Further, they are not entitled for the residential house and only it is not share hold house, unless the properties stand in the name of the revision petitioner/husband, the wife is entitled for the share hold house.

6 A perusal of the evidence shows that at the time of the marriage they were residing in one house. Though, they have stated that the properties stands in the name of the company, admittedly, the entire portion of the building was not occupied by the company. Some of the portions have been in the occupation of the company and some of the portions are used for residential purpose. Therefore, the contention raised by the learned senior counsel for the petitioner that she is not entitled to the right of shared household is not acceptable.

7 So far as, the quantum of maintenance amount is concerned, the petitioner was working as a employee in the company and getting salary a sum of Rs.30,000/- per month. As admitted by him as he has four accounts in the bank in his name. Admittedly, either before the Magistrate or before the appellate Court they have not filed any statement of accounts. Further, the contention raised by the learned counsel for the respondent, the petitioner is owning a property by availing Bank loan. The learned counsel for the petitioner submitted the statement of the accounts. Admittedly the marriage took place in the year of 2002. The year of complaint is 2014, the accounts statement filed only from the year of 2007. The learned counsel for the respondent contended that the transaction of the property is concerned, which has not been in the statement of account admitted by the learned counsel for the revision petitioner. Therefore, on reading of the entire materials this Court finds that the petitioner has not come with the clean hands and suppressed the actual facts that even he has no interest over the house and other properties in the company. His another brothers are only the Directors of the company. The facts remains that from the date of the marriage and till the date of leaving from the matrimonial home, the respondent was residing the said house and therefore the petitioner himself admitted that he is only taking care of his daughter and also he is ready to maintain her daughter.

8 Considering all these facts and circumstances of the case, the appellate Court has given a finding with regard to the enhancement of the maintenance amount from a sum of Rs.20,000/- per month to Rs.30,000/-per month and also ordered for the shared household and protection to the respondent/wife and her daughter.

9 Before this Court, the petitioner also undertakes to pay the entire school fees for his daughter in addition to the enhancement of maintenance amount of Rs.20,000/- per month.

10 In the result the Criminal Revision Case in Crl.RC.No.1330 of 2018 is disposed of, the petitioner is hereby directed to pay the maintenance of Rs.30,000/- per month along with entire school fees for his daughter. The revision case in Crl.R.C.No.1364 of 2018 is dismissed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

sbn

To

1. The VIII Metropolitan Magistrate, Chennai.
2. The XIX Additional Sessions Judge, Chennai.

+6 ccs to Mr.S.Thiruvengadam Advocate sr69098 & 69099

Crl.RC.Nos.1330 & 1364 of 2018

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