



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

Crl. R.C.(MD)No.357 of 2013

1. J.Gopinath

2. U.Jeyaprakash

.. Petitioners/Appellants/
Respondents 1 and 2

Vs.

Sumipriya

.. Respondent/Respondent/
Petitioner

Prayer : This Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the Judgment passed by the learned Sessions Judge, Sivagangai, dated 18.12.2012 in C.A.No.17 of 2012 modifying the Judgment dated 05.03.2012 in M.C.No.36 of 2010 on the file of the learned Principal District Munsif cum Judicial Magistrate, Karaikudi.

For Petitioners : Mr.P.Andiraj

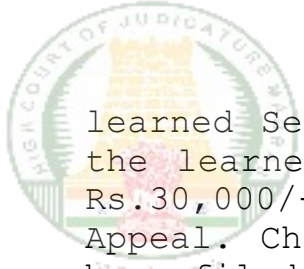
For Respondent : Mr.S.Ramasamy

ORDER

The first petitioner herein Gopinath got married to Sumipriya on 02.11.2008. A male child Rakshan was also born to them. The petitioner is employed in U.S.A. as Software Engineer. The first petitioner had filed H.M.O.P.No.86 of 2010 on the file of the Sub Court, Sivagangai seeking nullification of his marriage solemnized with the respondent Sumipriya on 02.11.2018.

2. The learned counsel appearing for the respondent/wife would state that H.M.O.P. was dismissed for non-prosecution and that it has not been restored till date. Since Gopinath had left for U.S.A and he has not taken care of his wife and child, Sumipriya filed M.C.No.36 of 2010 before the learned Judicial Magistrate, Karaikudi, under Section 12 of the Protection of Women from Domestic Violence Act 2005 and for other reliefs. In the said petition, she has stated that Gopinath and his father demanded Rs.3 ½ Lakhs as dowry. Counter affidavit was filed.

3. Sumipriya examined herself as P.W.1 and marked two documents as Ex.P.1 and Ex.P.2. On the side of the respondents, no evidence was adduced. They did not mark any exhibit also. The learned trial Magistrate by order dated 05.03.2012, while restraining the in-laws from causing any domestic violence on her directed Gopinath to pay monthly allowance of Rs.30,000/- to Sumipriya and the child from the date of petition. The said order was questioned by Gopinath by filing C.A.No.17 of 2012 before the



learned Sessions Judge, Sivagangai. By Judgment dated 18.12.2012, the learned Sessions Judge reduced the quantum of allowance from Rs.30,000/- to Rs.25,000/- and thus partly allowed the Criminal Appeal. Challenging the same, this Criminal Revision petition has been filed by Gopinath and his father.

4. This Court heard the learned counsel on either side.

5. The learned counsel appearing for the petitioners reiterated all the contentions set out in the memorandum of grounds. He wanted this Court to set aside the order passed by the Court below.

6. Per contra, the learned counsel appearing for the respondent herein/wife contended that the order passed by the Court below does not warrant any interference.

7. I carefully read the rival contentions and perused the evidence on record.

8. The marriage between Gopinath and Sumipriya cannot be disputed. It is true that Gopinath had filed a petition for nullifying the said marriage. But he has not obtained any decree before the Court below as objected by the learned counsel appearing for the respondent herein. The said H.M.O.P. filed by Gopinath was dismissed for non-prosecution. The fact that the child was born to Sumipriya through the said Gopinath are not in doubt. Therefore, the first petitioner Gopinath is bound to maintain the respondent and the child. He did not do so. Therefore, the respondent herein was left with no other option but to file M.C.36 of 2010 before the learned Judicial Magistrate, Karaikudi. The respondents in M.C.36 of 2010 did not bother about to enter into a witness box. They did not mark any document. The first petitioner herein has not produced any document with regard to income. Therefore, the monthly income quantum could not have been fixed. They ought to have proved the monthly income earned by Gopinath. He did not avail the said opportunity. Therefore, he cannot fault with the Court below for having fixed the quantum of monthly allowance without proper record. Even before this Court, the first petitioner has not made available his income proof. In any event, the first appellate Court has reduced the monthly allowance from Rs.30,000/- to Rs.25,000/-.

9. The learned counsel appearing for the respondent would state that for the last 4 years, the first petitioner had not paid even a single pie towards maintenance of the child or the respondent herein. The arrears have been mounted almost to Rs.22 Lakhs. Taking note of the conduct of the petitioners, I find no ground to interfere with the orders passed by the Courts below.

<https://hcservices.ecourts.gov.in/HCServices/Judgments> passed by the Courts below are confirmed. The Criminal Revision petition stands dismissed. No costs.



11. At this stage, the petitioner's counsel states that the first petitioner has been ready to deposit the maintenance allowance in the Bank account of the wife. But then, Sumipriya has closed the account. Hence he has not been able to deposit the maintenance allowance. This is a lame excuse. The first petitioner can always deposit the amount in question to the credit of M.C.No.36 of 2010 on the file of the learned Judicial Magistrate, Karaikudi. Therefore, the first petitioner herein is directed to deposit the entire maintenance arrears to the credit of M.C.No.36 of 2010 on the file of the learned Judicial Magistrate, Karaikudi within a period of eight weeks from the date of receipt of a copy of this order. As and when it is deposited, the complainant Sumipriya/wife is at liberty to withdraw the same. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Sessions Judge, Sivagangai.
2. The Principal District Munsif cum Judicial Magistrate, Karaikudi.
3. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to Mr.S.RAMASAMY, Advocate (SR-71315[F] dated 25/06/2019)

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24.06.2019

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