

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.08.2020

PRONOUNCED ON : 05.08.2020

CORAM

THE HON'BLE Mr. JUSTICE P.N. PRAKASH

Crl.R.C.No.544 of 2020

and Crl.M.P.No.4286 of 2020

Bharath Kumar

... Petitioner

Vs.

1.Sasikala
2.Priyanshi
3.Pranusha

.... Respondents

Prayer : Criminal Revision filed under Section 397 r/w 401 Cr.P.C. seeking to set aside the order dated 03.02.2020 passed in M.C.No.130 of 2017 on the file of the V Additional Family Court, Chennai.

For Petitioner : Mr.B.Sathish Sundar

For Respondents: Mr.C.D.Sugumar

O R D E R

This case is taken up through video conferencing.

2. This criminal revision has been filed seeking to set aside the order dated 03.02.2020 passed in M.C.No.130 of 2017 on the file of the V Additional Family Court, Chennai.

3. For the sake of convenience, the parties will be referred to by their name.

4. Heard Mr.B.Sathish Sundar, learned counsel for Bharath Kumar and Mr.C.D.Sugumar, learned counsel for Sasikala.

5. Bharath Kumar married Sasikala on 05.12.2004 at Siroha in Rajasthan; after marriage, they lived in joint family at Bhadravati, Karnataka; their first child Priyanshi was born on 19.01.2006; on account of matrimonial discord, the couple got estranged and Sasikala came to her paternal home in Chennai.

6. Bharath Kumar filed M.C.No.62 of 2008 before the Civil Court, Bhadravati, under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights, in which, Sasikala was set ex parte and an ex parte decree was passed on 31.03.2009. Since Sasikala did not join Bharath Kumar, he filed a divorce petition in M.C.No.39 of 2009 before the Civil Court, Bhadravati, on the ground of cruelty.

7. According to Sasikala, she mobilised a sum of Rs.1,00,000/- and gave it to Bharath Kumar, pursuant to which, he withdrew M.C.No.39 of 2009 on 29.06.2010. Their second daughter Pranusha was born on 20.03.2011. Thereafter, the spouses got estranged once again and Bharath Kumar filed M.C.No.3 of 2017 before the Civil Court, Bhadravati, for divorce on the ground of cruelty, which was contested by Sasikala. Pendente lite Sasikala filed an application for maintenance, in which, she was granted Rs.10,000/- per month, as maintenance, by the Civil Court, Bhadravati. However, after taking evidence, the Civil Judge, Bhadravati, by detailed order dated 27.04.2019, dismissed M.C.No.3 of 2017, that was filed by Bharath Kumar, for divorce.

8. Challenging the same, Bharath Kumar has filed an appeal in M.F.A.No.5039 of 2019 before the High Court of Karnataka at Bangalore and the same is pending. While the divorce petition was being contested, Sasikala filed M.C.No.130 of 2017 before the V Additional Family Court, Chennai, under Section 125 Cr.P.C., claiming maintenance for herself and her two children. Bharath Kumar contested the petition.

9. Sasikala examined herself as PW1 and marked Exs.P1 to P9. Bharath Kumar examined himself as RW1 and marked Exs.R1 to R10.

10. After considering the evidence adduced by both parties, the V Additional Family Judge, Chennai, by order dated 03.02.2020 in M.C.No.130 of 2017, awarded maintenance of Rs.15,000/- to Sasikala and Rs.10,000/- each to Priyanshi and Pranusha from the date of filing of the petition viz., 04.03.2017.

11. Aggrieved by the order of maintenance passed by the V Additional Family Court, Chennai, Bharath Kumar has preferred the present criminal revision before this Court.

12. The learned counsel for Bharath Kumar submitted that the trial Court had failed to take note of the fact that Sasikala was cantankerous and frequently deserted her matrimonial home for flimsy reasons. He also submitted that the trial Court, while fixing the quantum of maintenance, had failed to note that Bharath Kumar was drawing only a sum of Rs.20,000/- to Rs.30,000/- per month as salary. He further submitted that Bharath Kumar had paid a sum of Rs.1,70,000/- during the pendency of the divorce petition before the Civil Court, Bhadravati, as interim maintenance. It is his further submission that Bharath Kumar had paid the school fees for his two children.

13. Per contra, the learned counsel for Sasikala refuted the submissions made by the learned counsel for Bharath Kumar and submitted that a sum of Rs.10,000/- per month was paid as interim maintenance during the pendency of M.C.No.3 of 2017 before the Civil Court at Bhadravati, till it was dismissed.

14. This Court gave its anxious consideration to the rival submissions.

15. The petitioner has not denied the marriage nor the paternity of the children. His only contention is that he had not inflicted any cruelty on Sasikala nor failed and neglected to maintain her. It has been proved beyond cavil that after Priyanshi was born, the couple got separated and Bharath Kumar filed M.C.No.62 of 2008 for restitution of conjugal rights in Bhadravati and obtained an ex parte order against Sasikala. Soon thereafter, he filed M.C.No.39 of 2009 for divorce against Sasikala. Thereafter, he withdrew M.C.No.39 of 2009 and they started living together and gave birth to Pranusha. After Pranusha's birth, things became so bad for Sasikala that she had to leave her matrimonial home and take refuge in her parental home with her two children. In order to preempt any legal action by Sasikala, Bharath Kumar filed M.C.No.3 of 2017 for divorce once again and the same was dismissed by the Civil Court, Bhadravati. Since Sasikala did not have any financial support, she filed M.C.No.130 of 2017 before the Family Court, Chennai, under Section 125 Cr.P.C.

16. At this juncture, it may be relevant to extract paragraph nos.44 and 48 of the findings of the Civil Judge, Bhadravati in M.C.No.3 of 2017:

"44. The petitioner and the respondent are not leading life together and at present the respondent is living with her daughters in Chennai. The petitioner does not know exactly in which class his daughters are studying. This shows how much care the petitioner has taken of his daughters. In case the petitioner is really interested regarding the welfare of his daughters.

In case the petitioner is really interested regarding the welfare of his daughters he would have made attempts to know regarding the studies of his daughters.

48. These cases and their end show that the petitioner is in the habit of filing petitions for divorce and subsequently get the same dismissed. As regards these petitions evidence of R.W.1 is that she was living with the petitioner in the same house but the petitioner without her knowledge filed the cases. Therefore it cannot be said that the respondent has subjected the petitioner to mental cruelty."

17. Of course, the aforesaid findings are not binding either on the V Additional Family Court, Chennai, or on this Court, since the same is under challenge in the Karnataka High Court, by Bharath Kumar. However, even in the evidence adduced by Sasikala in the present case, she has stated about the number of cases Bharath Kumar has filed against her and how he had made her run from pillar to post. Bharath Kumar has not stated in the counter filed in M.C.No.130 of 2017 that he has paid the school fees for his children.

18. The evidence on record clearly establishes that Bharath Kumar had failed and neglected to maintain Sasikala and her two children in Bhadravati and therefore, she was forced to come to live with her parents in Chennai.

19. With regard to the quantum of maintenance, the learned counsel for Bharath Kumar submitted that the trial Court had failed to appreciate the income-tax returns (Ex-R10 series) of Bharath Kumar for the periods 2015-2016, 2016-2017, 2017-2018 and 2018-2019, which shows his annual income.

20. This Court read the evidence of Bharath Kumar. He has admitted that he is a partner in a jewellery shop at Bhadravati and has a car. What is disclosed in the income-tax returns cannot be treated as conclusive proof for determining the income of a person. The Income-tax Act, 1961, itself gives so many exemptions.

21. The learned counsel for Bharath Kumar submitted that there are six partners in the jewellery business and so, Bharath Kumar will not get anything more than Rs.4,00,000/- per annum. In support of his submission, he produced a copy of the partnership deed. This partnership deed was not marked in the trial Court by Bharath Kumar and therefore, the same cannot be looked into in this revision petition.

22. Taking into consideration the fact that Bharath Kumar is a partner in KK Jewellers at Bhadravati and his admission that he has a car and lives in joint family with his parents, the quantum of maintenance awarded by the trial Court cannot be said to be excessive warranting interference.

As a result, this criminal revision petition is dismissed as being devoid of merits. Connected CrI.M.P.No.4286 of 2020 is closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

nsd

To

V Additional Family Judge,
Chennai.

+1cc to Mr.B.Sathish Sundar, Advocate SR.No.26004

+1cc to Mr.B.Sathish Sundar, Advocate SR.No.26004 (27/08/2020)

CrI.R.C.No.544 of 2020

MR (CO)

GMV (21/08/2020)

सत्यमेव जयते

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