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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Cr1.R.C.No.354 of 2014

S.Shybudheen

Rep. by his power of attorney agent,  
Ziauddin Ahmed

... Petitioner

Vs.

1. Reyhana Shmeem Begam

2. Minor Abdul Kadhar

3. Minor Affranifana

Minor respondents 2 and 3 are  
represented by their mother viz.  
1<sup>st</sup> respondent

... Respondents

Prayer: Criminal Revision Petition filed under Section 397 & 401 Cr.P.C. To allow this revision petition and set aside the order dated 05.08.2013 passed in M.C.No.12/2011 on the file of Chief Judicial Magistrate Court, Nagapattinam.

For Petitioner : No appearance

For Respondents : No appearance

O R D E R

The criminal revision petition is directed against the order dated 05.08.2013, passed in M.C.No.12/2011, on the file of the Chief Judicial Magistrate Court, Nagapattinam. In this matter, the criminal revision petitioner has filed the revision through his power of attorney agent Ziauddin Ahmed. At one stage of the matter, it was reported to this Court that the power of attorney agent had died. Further, the counsel who had filed vakalat for the power of attorney agent had withdrawn his appearance and after the same had been recorded by this Court, notice had been sent to the revision petitioner. The revision petitioner having been served, thereafter the matter had been listed by printing the name of the revision petitioner in the cause list.



2. Notice was also ordered to the respondents and they having been served, they have also not entered appearance either in person or through counsel.

3. This Court therefore proceeded to dispose of the criminal revision petition on the basis of the materials available on record in the matter.

4. Briefly stated, according to the respondents' case, the marriage between the revision petitioner and the first respondent was celebrated on 04.12.1996 as per the Mohamadian customs and rites and thereafter, they were living as husband and wife at Nagur and revision petitioner left to Abudhabi for avocation and he took the first respondent to Abudhabi during 2000 and out of the marital life, respondents 2 and 3 were born to them and the revision petitioner was employed as a manager at Abudhabi at Adnet Exipition Center and earning a sum of Rs.3,00,000/- (Rupees Three Lakhs Only) in Indian currency and however, with a view to marry another girl, the revision petitioner leaded a prodigal and lavish life without caring for the respondents and on that score, he was often picking up quarrel and fights with the first respondent and also harassing her one way or the other and also further the revision petitioner had also taken away 80 sovereigns of gold presented to the first respondent at the time of the marriage and as well as grabbed the house site presented to her situated at Nagur and by selling the same, the revision petitioner had purchased a site at Karaikal and the revision petitioner often picked up fights and quarrel with the first respondent and finally drove the respondents from the matrimonial home on 04.08.2010 and the respondents are presently living in the house of the first respondent's sister. The revision petitioner also fraudulently created a letter as if he has declared Muthalak to the first respondent at Abudhabi on 07.10.2010. However, the said declaration of Muthalak on the part of the revision petitioner is invalid and the same is not sustainable in law and the respondents were living in affluent condition. The revision petitioner is bound to provide maintenance in tune to their status and entitlement and accordingly prayed for the maintenance in a sum of Rs.10,000/- (Rupees Ten Thousand only) for the first respondent and Rs.5,000/- (Rupees Five Thousand only) each for the respondents 2 and 3 and hence, they have laid the maintenance case.

5. The revision petitioner through his power of attorney agent had disputed the case of the respondents and admitted the marriage between him and the first respondent on 04.12.1996 and the birth of respondents 2 and 3 out of the said wedlock and according to revision petitioner, it is only the first respondent, who used to pick up quarrel with him using unparliamentary language whenever he leaves for work. On account of the attitude of the first respondent, the revision petitioner was unable to engage in his work and further, he was



also suspended and at present he is only working as a coolie earning Rs.30,000/- (Rupees Thirty Thousand only) per month. Further, he was also threatened with dire consequences by the first respondent in the event of his coming to India and only for the welfare of the respondents 2 and 3, the revision petitioner was tolerating the activities of the first respondent and however, the first respondent did not care to mend her ways and always engaged in quarrel and fights with the revision petitioner and as the further continuation of married life with the first respondent became impossible, the revision petitioner, as per the customs of the parties declared Muthalak against the first respondent on 07.10.2010 and the same has been also disclosed to the first respondent and in this connection, the first respondent also executed a Muchilika to the petitioner's power of attorney agent and therefore, the first respondent is not entitled to claim any maintenance from the revision petitioner and according to him, the first respondent was only presented with 10 sovereigns of gold and the site purchased by the revision petitioner is out of his self earned income and only to harass and cause trouble to the revision petitioner, a false case has been laid by the respondents. The revision petitioner is not liable to provide maintenance to the respondents and the petition is liable to be dismissed.

6. In support of the respondents' case, PW1 was examined, Exs.P1 to P8 were marked. On the side of the revision petitioner, RWs 1 and 2 were examined and Exs.R1 to R4 were marked.

7. On a consideration of the materials placed on record by the respective parties, both oral and documentary and the submissions made, the lower Court was pleased to grant maintenance to the first respondent in a sum of Rs.5,000/- (Rupees Five Thousand Only) per month and to the respondents 2 and 3 in a sum of Rs.2,500/- (Rupees Two Thousand Five Hundred only) each per month and accordingly, directed the revision petitioner to pay the abovesaid maintenance amount from the date of the petition. Challenging the same, the criminal revision petition has been preferred by the revision petitioner.

8. The revision petitioner has not disputed his marriage with the first respondent and the birth of the respondents 2 and 3 to them out of their wedlock. It is thus found that the first respondent is the wife of the revision petitioner and the respondents 2 and 3 are the children of the revision petitioner. In such view of the matter, as rightly determined by the lower Court, the revision petitioner is bound to provide maintenance to them as per law.

9. Now, according to the respondents, the revision petitioner was employed as Manager at Abudhabi and earning Rs.3,00,000/- (Rupees Three Lakhs Only) per month in Indian currency and not providing maintenance to them and often picking



up quarrel and fights with the first respondent with a view to marry another lady and finally drove them from the matrimonial home and therefore, according to the respondents, the revision petitioner is liable to provide maintenance to them as prayed for. That the revision petitioner is employed in Abudhabi is not in dispute and the same has been admitted by the revision petitioner and however, according to the revision petitioner, it is only the first respondent who often picked up quarrel and fights with him and made his life miserable. On account of the attitude of the first respondent, he was unable to carry on his job and he was suspended from job and therefore, according to the revision petitioner, he is at present earning Rs.30,000/- (Rupees Thirty Thousand only) per month and not Rs.3,00,000/- (Rupees Three Lakhs only) as put forth by the respondents. However, to sustain the monthly income of the revision petitioner at Abudhabi, as rightly determined by the lower Court, the revision petitioner would be in a position to substantiate the same with acceptable and reliable documents, however, for the reasons best known to the revision petitioner, he has not endeavoured to place any document pointing out the income earned by him at Abudhabi. The revision petitioner has also not endeavoured to enter into the box and depose about his income earned by him at Abudhabi. On the other hand, only his power of attorney agent has been examined in this matter on his behalf. However, the power of attorney agent examined as RW1 has admitted that he has not placed any document to evidence that the revision petitioner is earning only Rs.30,000/- (Rupees Thirty Thousand only) per month and further admitted that he does not have any personal knowledge about the living condition of the revision petitioner and the first respondent at Abudhabi and therefore, when the power of attorney agent is not in a position to substantiate the actual income earned by the revision petitioner at Abudhabi by placing acceptable materials and also the living condition of the revision petitioner and the respondents at Abudhabi, in such view of the matter, as held by the lower Court, the revision petitioner has suppressed the vital materials pointing out his income with a view to avoid payment of maintenance to the respondents one way or the other.

10. Now, according to the revision petitioner, it is only the first respondent who picked up quarrel and fights often with the revision petitioner and on that score, he is unable to carry on his matrimonial life with her. Per contra, according to the first respondent, with a view to contract marriage with another lady, it is only the revision petitioner who had been quarrelling and fighting with the first respondent and finally drove them out of the matrimonial home and accordingly, when the parties have raised rival claims blaming each other for not living together and when the first respondent has tendered evidence that it is only the revision petitioner who had failed to take care of them by picking up quarrel and fights often without any basis, to contradict the abovesaid evidence of the first respondent, as above pointed out, the revision petitioner



has not endeavoured to come forward and adduce evidence in support of his version. The power of attorney agent, examined as RW1, has admitted that he has no knowledge that the first respondent used to quarrel and fight with the revision petitioner and that he knows the same as informed by the revision petitioner. Therefore, it is found that the power of attorney agent's evidence with reference to the matrimonial life of the revision petitioner and the first respondent, he having no personal knowledge about the same and in such view of the matter, the power of attorney agent would not be entitled to adduce evidence on behalf of the principal with reference to the facts which are not within his personal knowledge and particularly, which are personally known to the revision petitioner. The abovesaid determination of the lower Court merits acceptance.

11. In the light of the abovesaid factors, when there is no acceptable contra evidence adduced on the part of the revision petitioner that the respondents had left the matrimonial home on their own accord or on account of their conduct, on the other hand, when the marriage between the revision petitioner and the first respondent is subsisting, in such view of the matter, as determined by the lower Court, the revision petitioner is bound to provide them maintenance as per law.

12. The revision petitioner has also put forth the case that he has declared Muthalak against the first respondent at Abudhabi on 07.10.2010 in the presence of witnesses and therefore, the first respondent being the divorcee is not entitled to claim maintenance from him. However, as rightly determined by the lower Court, as per Section 125 Cr.P.C., even a divorced women is entitled to claim maintenance from her divorced husband as long as she does not remarry and further placed reliance upon the decision reported in 2010 (1) CTC Page 121 (Shabana Bano Vs.Imran Khan). It is found that even assuming for the sake of arguments, the revision petitioner had validly divorced the first respondent and when it is not the case of the revision petitioner that the first respondent has remarried, in such view of the matter, as held by the lower Court, the revision petitioner is bound to provide maintenance to the first respondent as well as to his children, respondents 2 and 3.

13. Further, as determined by the lower Court, when the claim of declaration of Muthalak on the part of the revision petitioner against the first respondent on 07.10.2010 at Abudhabi is not substantiated by the document marked as Ex.R1, in such view of the matter, the revision petitioner cannot be held to have validly divorced the first respondent as put forth by him and therefore, the determination of the lower Court that Ex.R1 cannot be held to be a valid document for upholding the claim of divorce of the first respondent by the revision



petitioner.

14. Further, as could be seen from the impugned order, the revision petitioner had been directed to pay maintenance in a sum of Rs.4,000/- (Rupees Four Thousand only) to the respondents in Crl.R.C.Nos.1284 and 1285 of 2011 by order dated 08.11.2011. However, it is found that the revision petitioner has not cared to comply with the order and failed to provide maintenance to the respondents as ordered by this Court and the same has also been taken into consideration by the lower Court.

15. Further, the revision petitioner has also not endeavoured to appear before the lower Court despite the High Court having directed him to appear before the lower Court as ordered by the lower Court. The abovesaid acts of the revision petitioner would only go to show that the revision petitioner is a man of not obeying the orders of the Court and therefore, the revision petitioner has not come forward with a true case and resisted the valid claim for maintenance put forth by the respondents.

16. Resultantly, the first respondent being the wife of revision petitioner and respondents 2 and 3 being the children of revision petitioner, the revision petitioner is bound to provide maintenance as per law and when it is not the case of the revision petitioner that the respondents are earning any income, in such view of the matter, the lower Court, considering the status of the parties as well as the income derived by the revision petitioner at Abudhabi and the needs of the respondents at present circumstances, determined that the revision petitioner is liable to pay maintenance in a sum of Rs.5,000/- (Rupees Five Thousand Only) to the first respondent and in a sum of Rs.2,500/- (Rupees Two Thousand Five Hundred only) each per month to the respondents 2 and 3 from the date of the petition and considering the quantum of maintenance determined by the lower Court, in my considered opinion, the same is found to be not excessive considering the status of the parties.

17. For the reasons aforesaid, the impugned order does not merit any interference. In view of the aforesaid reasons, the criminal revision fails and is accordingly dismissed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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To:

The Chief Judicial Magistrate Court,  
Nagapattinam.

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RSI (CO)  
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