

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.11.2020

PRONOUNCED ON : 09.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.No.23985 of 2019
and Crl.M.P.Nos.12707 & 12709 of 2019

Raja @ Neelamegam,
S/o.Late Palaniappa Gounder ... Petitioner

Vs

Malliga
W/o.Raja @ Neelamegam Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order dated 14.12.2018 passed in C.R.P.No.32 of 2017 on the file of the learned II Additional District Judge at Salem in confirming the order dated 20.04.2017 in M.C.No.11 of 2015 passed by the learned Judicial Magistrate No.I, Attur, Salem District.

For Petitioner : Mr.L.Rajendran

For Respondent : Mr.A.Sriram

ORDER

Aggrieved over the concurrent findings given by the learned Judicial Magistrate No.I, Attur, Salem District by an order dated 20.04.2017 in M.C.No.11 of 2015, which has been filed under Section 125 Cr.P.C., and the order dated 14.12.2018 passed by the learned II Additional District Judge, Salem, in C.R.P.No.32 of 2017, the respondent/revision petitioner in those petitions is before this Court with a prayer to set aside the order dated 14.12.2018 in C.R.P.No.32 of 2017.

2. Heard Mr.L.Rajendran, learned counsel appearing for the petitioner and Mr.A.Sriram, learned counsel appearing for the respondent.

3. The respondent is the legally wedded wife of the petitioner. At the time of marriage, the parents of the respondent presented 60 sovereigns of gold jewels to her and one sovereign gold ring to the petitioner and household articles

worth about Rs.1,00,000/-. Out of the wedlock, the respondent is blessed with two male children, by name Karthick and Gowtham. After their birth, the petitioner began to ill-treat the respondent and had also developed illicit relationship with one Poongodi. When at the time the respondent raised objections, the petitioner had beaten the respondent and her elder son and subjected them to cruelty.

4. On the instances of the petitioner, the respondent and her mother had borrowed a sum of Rs.50,000/- as loan from Urban Co-operative Bank, Narasingapuram and purchased the machineries to the tune of Rs.1,50,000/- for running flour mill by the petitioner. However, after beginning the flour mill, the petitioner began to renew his illicit relationship with the above said Poongodi and therefore, the respondent along with her elder son left the matrimonial home and joined with her parents. After leaving the matrimonial home, the respondent was unable to maintain herself and she is residing with her elder son with great difficult.

5. The application filed by the petitioner in H.M.O.P.No.18 of 2012 for the relief of dissolution of marriage has been withdrawn by the petitioner himself. Thereafter, the respondent filed a petition under Section 125 of Cr.P.C., for maintenance in M.C.No.11 of 2015. In that petition, the respondent has stated that the petitioner is getting a sum of Rs.30,000/- per month from the flour mill and also he has rented out two shops, thereby, he is getting a sum of Rs.2,500/- per month from each shops. Hence, she has claimed monthly maintenance of Rs.10,000/-.

6. Before the learned Judicial Magistrate No.I, Attur, the petitioner herein filed a counter affidavit and denied the averments made by the respondent in the petition filed under Section 125 of Cr.P.C. After conducting trial, the learned Judicial Magistrate No.I, Attur, concluded the petition in favour of the respondent as the petitioner herein neglected the respondent and also he has to pay maintenance to the respondent. Ultimately the learned Magistrate directed the petitioner to pay a sum of Rs.5,000/- per month as maintenance to the respondent.

7. Aggrieved over the same, the petitioner herein filed a revision petition before the learned II Additional District Judge, Salem in C.R.P.No.32 of 2017. The learned II Additional District Judge, Salem had elaborately discussed the issue involved in the revision petition and ultimately confirmed the order passed by the learned Judicial Magistrate No.I, Attur. Challenging the same, the revision petitioner is before this Court with a prayer to set aside the order passed in C.R.P.No.32 of 2017.

8. Admittedly, the respondent herein is the wife of the petitioner. The marriage between the petitioner and the respondent was solemnised, 34 years back as per the Hindu rites and customs. After the marriage, both of them blessed were with two male children and as of now, the elder son is with the respondent and the younger son is with the petitioner.

9. The learned counsel appearing for the petitioner challenges the validity of the order passed in C.R.P.No.32 of 2017, on two folds. First one is, though the petitioner is willing to join with the respondent, the respondent is adamant and refusing to join with the petitioner and therefore, she is not eligible for getting maintenance from the petitioner. Secondly, the respondent is leading adultery life with one Kesevan and therefore, she is not entitled to receive any maintenance from the petitioner.

10. In respect of the first submission made by the petitioner, the Courts below have found that the petitioner had illicit relationship with one Poongodi and when the same was questioned by the respondent, she and her elder son were subjected to cruelty and in the year 2012 itself, the petitioner has thrown out the respondent from the matrimonial home and from that date onwards, she was living separately. But in respect to the same, during the time of giving evidence as D.W.1, the petitioner had taken a stand as the respondent alone having illicit relationship with one Kesevan.

11. Since such stand is in respect to morality of the respondent, the burden of proof is on the petitioner to establish that the respondent is leading adultery life. In this regard for proving the said allegation, the petitioner alone has given oral evidence before the trial Court. For proving the adultery life, a specific and cogent evidence is necessary and mere suspicion on the conduct of his wife is not enough to establish that she is living adultery life. In fact, for proving the said allegation, except the evidence given by the petitioner and his younger son, no private witness has been examined on the side of the petitioner.

12. Assuming that the said allegation is true, ordinarily, no man would wish to live with a wife, who leads adultery life. But here it is a case, the petitioner is ready to join with the respondent. The said circumstances revealed the fact that only for the purpose of avoiding the payment of maintenance, the said plea has been taken by the petitioner before the Courts below.

13. In general, a man having the knowledge of adulterous relationship of his wife and suspects her fidelity, at no point of time, would think to live with the said lady. Therefore, I am of the considered opinion that levelling the false allegations against his wife, in respect of the morality, amounts to neglecting his own wife. Therefore, the reason stated by the petitioner to set aside the order passed in the Criminal Revision Petition is not having any merits.

14. As far as the quantum of maintenance fixed by the Courts below is concerned, both the Courts below have directed the petitioner to pay the maintenance of Rs.5,000/- per month. In this regard, the evidence revealed the fact that the petitioner is running a flour mill and earning a sum of Rs.30,000/- per month. Further he is getting a sum of Rs.5,000/- per month as rent from the two shops owned by him. The evidence given by the respondent in that aspect is not disproved by the petitioner. Therefore, in the said circumstances, it is easy for him to pay the maintenance of Rs.5,000/- to the respondent. In other words, the evidence let in on the side of the petitioner is not sufficient to accept the case of the petitioner in entirety.

15. Therefore, in the light of the above discussion, this Court holds that the petition filed under Section 482 of Cr.P.C., by the petitioner is devoid of merits and is dismissed, accordingly. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rts

To

1. The II Additional District Judge
Salem.

2. The Judicial Magistrate No.I,
Attur, Salem District.

+1 CC to Mr.L.Rajendran, Advocate sr 39714

+1 CC to Mr.L.Mouli, Advocate sr 39995

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SS(CO)
SP(07/01/2021)