

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.Nos.1032 and 1033 of 2017
and
Crl.MP.Nos.9726 and 9727 of 2017

G.Umapathy .. Petitioner in both revisions
Vs

Banumathy .. Respondent in both revisions

Prayer in Crl.R.C.No.1032 of 2017 : Criminal Revision filed under Section 397 read with 401 of the Code of Criminal Procedure, to call for the records in Crl.M.P.No.46 of 2014 in M.C.No.33 of 2008 on the file of the District Court/Family Court, Puducherry and set aside the same.

Prayer in Crl.R.C.No.1033 of 2017 : Criminal Revision filed under Section 397 read with 401 of the Code of Criminal Procedure, to call for the records in Crl.M.P.No.244 of 2012 in M.C.No.33 of 2008 on the file of the District Court/Family Court, Puducherry and set aside the same.

For Petitioner in : Mr.M.Gnanasekar
both the revisions

COMMON ORDER

The petitioner is a septuagenarian and the respondent is a sexagenarian. They are husband and wife and are at loggerheads. The husband filed these revisions questioning two separate orders dated 09.06.2017 passed by the Family Court, Puducherry, in Crl.M.P.Nos.46 of 2014 and 244 of 2012 respectively.

2. The respondent/wife filed M.C.No.33 of 2008 before the Family Court, Puducherry, seeking monthly maintenance of Rs.2,500/- per month from the petitioner/husband. The petitioner/husband agreed before the Court that he would pay the maintenance of Rs.2,300/- per month and also made an endorsement to that effect, based on which, a final order was passed on 07.06.2012 directing him to pay the said sum of Rs.2,300/- per month from the date of petition, i.e., 23.07.2008, before 10th of every English Calender month and the arrears of maintenance was

ordered to be deposited within two months of receipt of the said order, after deducting the payment made earlier.

2.1. The respondent herein/wife filed Crl.M.P.No.244 of 2012 under Section 128 Cr.P.C. seeking a direction to the petitioner herein/husband to pay the arrears of maintenance to the tune of Rs.70,267/- and in default, to order his arrest.

2.2. The petitioner/husband filed Crl.M.P.No.46 of 2014 under Section 127 of Cr.P.C. seeking to modify the said order on the ground that he was suffering from diabetic mellitas for more than two decades and because of insulin deficiency in his body, he acted in absence of mind and thereby made endorsement by human error agreeing to pay the monthly maintenance amount to the respondent/wife. He has also claimed that he has no wherewithal to pay the maintenance amount, whereas, the respondent/wife is living happily with her son.

2.3. The petitioner/husband and the respondent/wife were examined as P.W.1 in their respective cases. In Crl.M.P.No.244 of 2012, the petitioner/husband was examined as R.W.1 and one Kasthuri was examined as R.W.2 and Ex.P.1 was marked on the side of the wife and Exs.R.1 to R.3 were marked on the side of the husband. In Crl.M.P.No.46 of 2014, the petitioner herein/husband marked Exs.P.1 to P.17, but no witness was examined and no document was marked on the side of the wife.

2.4. After appreciating the oral and documentary evidence, the Family Court dismissed the petition filed by the husband in Crl.M.P.No.46 of 2014, while allowing the petition in Crl.M.P.No.244 of 2012 filed by the wife, by two separate orders dated 09.06.2017, which are impugned in these revisions.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. At the outset, it is to be stated that the Thiruvallur, the great saint said 2000 years ago, “அன்பும் அறனும் உடைத்தாயின் இல்வாழ்க்கை பண்பும் பயனும் அது.”

It means, “if love and virtue are in the household reign, this is of life the perfect grace and gain.” Dr.Ambedkar said, “The relationship between husband and wife should be one of closest friends”. It is said “Love should not just be a feeling, it should be a way of life”. The petitioner and his wife lost their friendship, so also love for each other. And at the age of above 70 and 60 respectively, they are fighting in the Courts.

5. Be that as it may, now coming to the facts of the case, the petitioner/husband is a retired postal department servant and he has been in receipt of pension. Though he alleged that the respondent/wife has an abode and also has their son on her side to take care of her, whereas, he has nothing with him, he cannot wash away his hands from maintaining his wife. A duty is

cast upon him to maintain his wife, till she breathe lost or his last breath. And even if he receives the final call first, he should pave the way for her to lead a decent life in her last days, after his death.

6. Admittedly, the order dated 07.06.2012 granting monthly maintenance of Rs.2,300/- to the respondent/wife was passed on the basis of the endorsement made by the petitioner/husband. The only ground raised by the petitioner/husband to modify the said order before the Family Court was his illness. According to him, he was suffering from diabetic mellitas for more than two decades and consequent insulin deficiency, which allegedly prompted him to act in absence of mind and to make endorsement by human error agreeing to pay the monthly maintenance amount to the respondent/wife.

7. The Family Court has rejected the said contention by appreciating the materials placed before it properly and after referring to a catena of decisions, has held that the petitioner is liable to pay the agreed maintenance amount to the respondent/wife and accordingly, passed the impugned orders dated 09.06.2017. This Court finds no reason much less valid reason to interfere with the same. Further, the learned counsel for the petitioner is unable to state as regards the compliance of the interim order passed by this Court dated 16.08.2017. Hence, the petitioner is not entitled to get any relief in these Criminal Revision Cases.

8. At this juncture, the learned counsel for the petitioner prayed that the maintenance case pending on the file of the Family Court, Puducherry, may be directed to be disposed of, within a time frame to be stipulated by this Court.

9. In view of the submission now made by the learned counsel for the petitioner, these Criminal Revision Cases stand disposed of, directing the Family Court, Puducherry, to dispose of MC.No.33 of 2008 on merits and in accordance with law, after affording due opportunity of personal hearing to both the parties, within a period of three months from the date of receipt of a copy of this order. It is open to the respondent to proceed against the petitioner for recovery of monthly maintenance, including arrears, in the manner known to law. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The Family Court, Puducherry.

Cr1.R.C.Nos.1032 & 1033 of 2017

KS (CO)
RMP (20/07/2020)



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