

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.No.31275 of 2019
and
Crl.M.P.No.17051 of 2019

Angamuthu

... Petitioner

Vs

Thenmozhi

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying to set aside the order passed in Crl.R.C.No.8 of 2017 on the file of the Principal Sessions Judge, Namakkal dated 10.07.2019 and thus allow the Criminal Original Petition.

For Petitioner : M/s.Labrar Md Abdullah

For Respondent : Mr.W.Camyles Gandhi.

O R D E R

(through Video Conference)

This Criminal Original Petition has been filed seeking the relief, to set aside the order passed in Crl.R.C.No.8 of 2017 on the file of the Principal Sessions Judge, Namakkal dated 10.07.2019, in which the order passed by the Judicial Magistrate, Paramathi in M.C.No.10 of 2014 dated 10.03.2017 has been confirmed.

2.The brief facts of the case is that the marriage between the petitioner and respondent was solemnized on 05.07.1996 at Kadalipatti Valarpirai Tirumana Mandapam with the consent of parents of either parties as per Hindu rites and customs. Out of the wedlock, the respondent given birth to two male children. However, after ten years from the date of marriage, the petitioner herein quarreled with the respondent by saying that he does not like the respondent and further, it is stated that the petitioner has got an illegal connection with his brother's wife viz., Thulasimani and when it was questioned by the respondent, the petitioner said that he is having contacts with other ladies also who are beautiful than the respondent.

3.Ultimately, the petitioner herein beaten the respondent and driven her out from the house and subsequently, on 13.04.2011, when the respondent went to the petitioner's home for reunion, the parents of the petitioner beaten her and thereby the respondent was admitted in hospital from 14.04.2011 to 18.04.2011. Further, for the said offence on 16.04.2011, Velagoundanpatti police has registered a case in Crime No.216 of 2011 against the petitioner. As of now, the respondent being the wife of the petitioner is living in her parental home and striving hard for her livelihood.

4.Only in the said circumstances, the respondent herein filed petition under Section 125 of Criminal Procedure Code before the Judicial Magistrate, Paramathi, claiming maintenance from the petitioner. The learned Judicial Magistrate, Paramathi, after elaborate enquiry, came to the conclusion that the petitioner herein neglected the respondent and also, he is having sufficient income to pay the maintenance. Resultantly, the learned Judicial Magistrate, Paramathi directed the petitioner to pay a sum of Rs.5,000/- per month as a maintenance to the respondent.

5.Aggrieved over the same, the petitioner herein filed a revision before the Principal Sessions Judge, Namakkal in CrI.R.C.No.8 of 2017 wherein, he prayed to set aside the order passed by the Judicial Magistrate, Paramathi dated 10.03.2017. By order dated 10.07.2019, the learned Principal Sessions Judge, Namakkal had dismissed the revision filed by the Petitioner and confirmed the order passed by the learned Judicial Magistrate, Paramathi. Now praying to set aside the said order, the petitioner is before this Court.

6.The first and foremost contention raised by the learned Counsel appearing for the petitioner is that the Courts below, without considering the means having by the respondent and also without considering the fact that the petitioner is looking after his aged mother who is physically handicapped, allowed the application filed by the respondent. Further, the case of the petitioner is that though the respondent is a lady, she is able to maintain herself. More than that, before the trial Court, the respondent has not produced any relevant documents to show the income of the petitioner. Further, the learned Counsel for the petitioner contended that the petitioner is having lot of expenses for his sons' academic purpose and also for medical expenses towards his handicapped mother. According to him, ordering to pay a sum of Rs.5,000/- per month to the respondent as maintenance is excessive and therefore, he prayed to set aside the order dated 10.07.2019 passed by the learned Principal Sessions Judge, Namakkal.

7.Heard M/s.Labrar Md Abdullah, learned Counsel appearing for the Petitioner and Mr.W.Camyless Gandhi, learned Counsel appearing for the respondent and perused the materials available on records.

8.First of all, in respect of the relationship between the petitioner and the respondent, it was held by the Courts below that the respondent is the legally wedded wife of the petitioner. At this juncture, it is necessary to see the Judgment of the High Court of Kerala in the case of "T.K.Ramkumar -vs- C.M.Subalakshmi" reported in "2007 CRL LJ 2414" wherein the High Court of Kerala has held that when a fact finding Court after review of the evidence on records, came to the conclusion that parties are legally married, the High Court cannot disturb the said finding in exercise of inherent powers under Section 482 of Criminal Procedure Code. Therefore, it appears that there is no dispute on either side in respect to the validity of the marriage held between the petitioner and the respondent. Therefore, this Court cannot disturb the finding that the respondent herein is the legally wedded wife of the petitioner.

9. Secondly, it has to be decided whether the petitioner neglected or refused to maintain the respondent. In this regard, it is for the wife seeking maintenance under Section 125 of Criminal Procedure Code has to prove the fact that the respondent is refusing to maintain her.

10.In this regard, the evidence given by the petitioner before the trial Court as RW1 is very clear that he has made various allegations against the respondent in which one of the allegation is that she is having illegal contact with so many persons. Since the said allegation is touching the morality of the respondent, it is the duty vested upon the petitioner to prove the same as genuine one, but, in order to prove the same, no substantial evidence was put forth by the petitioner before the trial Court. In fact, the witness examined on the side of the petitioner has not stated anything about the allegation. The said circumstances reveals the fact that without any sufficient material, the petitioner herein made a false allegation against the respondent, as the respondent is a morally turpitude woman.

11.Therefore, in this regard, I am of the considered opinion that making false allegation against the wife, is sufficient to hold that the petitioner neglected the respondent and also it amounts to commit cruelty towards his wife. Therefore, in this aspect also, the case of the petitioner is devoid of merits. Further, in order to prove the means having by the respondent,

no material has been placed before the Courts below on the side of the petitioner.

12.In respect of the earnings of the petitioner, at the time of giving evidence as PW1, the respondent herein stated that the petitioner by engaging thirty persons performing the contract work and earning Rs.40,000/- per month. Though the said evidence has not been proved by producing relevant documents, it was stated on the side of the petitioner that he is doing masonry work. Therefore, it is very clear that being the contractor of masonry work, he can earn up to Rs.600/- per day which is sufficient to maintain his handicapped mother, his children and the respondent herein. Only on considering the same, the Courts below came to the conclusion that the petitioner is able to give Rs.5,000/- per month to the respondent as interim maintenance.

13.Therefore, assailing the said finding, nothing was put before this Court on the side of the petitioner that the petitioner is not having any means to pay the maintenance. Therefore, in the light of the above circumstances, I am of the opinion that the petitioner did not prove the special circumstances which warrants interference in the order passed by the learned Principal Sessions Judge, Namakkal.

14.Accordingly, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ay
To

1.The Principal Sessions Court, Namakkal.

2.The Public Prosecutor,
High Court of Madras,
Chennai.

+1 cc to M/s.W.Camyles Gandhi, Advocate Sr.No. 35938

Cr1.O.P.No.31275 of 2019
and
Cr1.M.P.No.17051 of 2019

UM(CO)
RMP(15/12/2020)