



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2020

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.R.C. (MD).No.226 of 2016

WEB COPY
Tamilarasi

.. Petitioner/Complainant

Vs.

D.Selvakumar

.. Respondent/Respondent

PRAYER: Criminal Revision Case, filed under Section 397 and 401 of the Criminal Procedure Code, to set aside the order passed in C.A.No.50 of 2013 dated 30.10.2015 on the file of the III Additional Sessions and District Judge, Thanjavur @ Pattukkottai modifying the judgment passed in D.V.C.No.4 of 2012 dated 05.06.2013 on the file of the District Munsif cum Judicial Magistrate, Orathanadu.

For Petitioner : Mr.N.Balakrishnan

For Respondent : Mr.Udayakumar
(Legal Aid counsel)

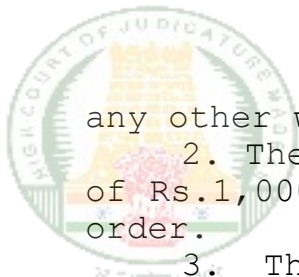
ORDER

This Criminal Revision Case is filed by the wife of the respondent as against the order of the first appellate Court namely III Additional District and Sessions Court, Thanjavur at Pattukkottai in C.A.No.50 of 2013, dated 30.10.2014. By the said order, the first appellate Court modified the Judgment passed by the learned District Munsif cum Judicial Magistrate, Orathanadu, in D.V.C.No.4 of 2012, dated 05.06.2013.

2.The brief facts of the case are as follows:

The marriage between the revision petitioner and the respondent was solemnized on 06.02.2003 at Pathuthaku Village. At the time of their marriage, the parents of the petitioner gave 14 sovereigns of gold ornaments to the revision petitioner and 2 sovereigns of gold ornaments to the respondent and apart from this, a TVS 50 Motor cycle and other house hold articles were also given to them. Thereafter, since the petitioner could not conceive, by referring the same, the respondent and his family members insulted her by abusing her as 'maladi'. The respondent has also developed some intimacy with one Ananthi and also illegally married her and is having a child through the said Ananthi. In view of the strained relationship, the petitioner left the matrimonial home and residing with her parents and also filed an application under the Domestic Violence Act for the relieves of maintenance and for compensation. The trial Court by order dated 05.06.2013, granted the following relieves in favour of the revision petitioner:-

1. The respondent shall not call the petitioner as 'maladi' or



any other word similar to that.

2. The respondent shall arrange a rental house for minimum rent of Rs.1,000/- within a period of three months from the date of that order.

3. The respondent shall pay a sum of Rs.3,000/- towards maintenance, expenses of medicine and food, to the petitioner on or before 5th day of every month.

4. The respondent shall pay a sum of Rs.25,000/- as compensation to the revision petitioner for her mental agony and also to pay a sum of Rs.5,000/- for the Court expenses.

3.As against the above order of the trial Court, the respondent preferred an appeal before the Court of Sessions and the same was taken on file in C.A.No.50 of 2013 on the file of the III Additional Sessions and District Judge, Thanjavur at Pattukkottai and the Appellate Court by its Judgment dated 30.10.2015, modified the orders of the trial Court as follows:

1.Since there is no need for paying any rent of Rs.1,000/-, when the petitioner is residing with her parents, the second portion of the order of the trial Court is set aside.

2. Since the respondent is an agriculturist and not having sufficient income, the order of maintenance of Rs.3,000/- was modified as Rs.1,000/-.

3.Similarly, the order of compensation for Mental agony was also reduced from Rs.25,000/- to Rs.5,000/-.

4.However, the cost for Court expenses was confirmed.

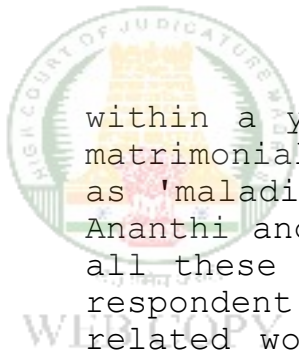
4.As against this order of the first appellate Court, the revision petitioner preferred this revision case on the ground that the appellate Court modified the order of the trial Court, without assigning any reason and without appreciating the evidence properly.

5.This revision petition was admitted in the year 2016 and notice was ordered to the respondent. Though notice has been served on the respondent, the respondent has not appeared either in person or through counsel.

6.Since this revision case is arising out of an order of maintenance on a DVAC proceedings and in view of the submissions made by the learned counsel for the petitioner that the respondent has not even complied the modified order of the appellate Court, this Court deems it fit to appoint Mr.Udayakumar, an Advocate (Enrol. No.1569/2004) who is having 16 years experience in Criminal side, as a Legal Aid counsel to represent the case on behalf of the respondent.

7.Heard Mr.Balakrishnan, learned counsel appearing for the revision petitioner and Mr.Udayakumar, learned counsel appearing for the respondent.

<https://hcservices.courtservice.in/hcservices> 8.The learned counsel for the revision petitioner submits that



within a year of marriage, the petitioner was driven out from the matrimonial home that she could not conceive and she was also abused as 'maladi'. The respondent has also developed intimacy with one Ananthi and is having a child through the said Ananthi. Considering all these materials, the trial Court passed an order directing the respondent not to address her or call her by 'maladi' or any other related words and also passed an order to provide a rented house with a minimum rent of Rs.1,000/- and a sum of Rs.3,000/- as maintenance. The first Appellate Court by assigning a reason that the petitioner is residing with her parents has set aside the order for rent and also modified the order of maintenance passed by the trial Court. The appellate Court has also modified the order of compensation awarded by the trial Court, but without any valid reasons.

9.Mr.Udayakumar, learned counsel for the respondent submits that the respondent is a poor farmer, having only one acre of land, that too is a joint property with his brothers and with this limited income from the land, he is surviving. Since the order of maintenance ordered by the trial Court was excess, the first appellate Court rightly modified the orders of the trial Court and there is no reason to interfere with the orders of the Appellate Court.

10.This Court paid its anxious consideration to the rival submissions made and also perused the available records.

11.This revision petition is filed as against the order of the first appellate court in modifying the maintenance amount as well as the rental amount awarded by the trial Court. The first appellate court has also concurred with the views of the trial court that this revision petitioner is entitled for maintenance and other reliefs as claimed for. However, considering the fact that the respondent is a farmer and not having sufficient source of income, taken a lenient view by modifying the quantum of maintenance. But, the reason assigned by the first appellate court does not sound good and there is no basis for arriving the said decision.

12.The law laid down is that even if the person is not having sufficient sources, he is expected to maintain his wife and children. This Court, in **K.S.Vijayalakshmi Vs. N.S.Ramesh** in C.R.P. (PD) (MD).No.2017 of 2012 and C.R.P.(PD0(MD).No.1555 of 2012 decided on 8th November, 2012 held as follows:

*The Point: 9. Trite, the proposition of law is that **the husband who is hale and healthy is expected to strain all his nerves to see that he is earning for maintaining himself as well as his dependants.** The wife who is incapable to maintain herself, is entitled to maintenance and **it would not lie in the mouth of the husband that he lost his job and that he has no source***



of income; some how or other, the husband has to maintain his wife.

I am fully aware that the wife cannot be driven from pillar to post to gather evidence to prove the financial ability of the husband to provide maintenance to his wife."

13. In this case, the respondent has deserted his wife/the petitioner on the ground that she could not give birth of a child and developed intimacy with one Ananthi and also gave birth of a child through the said Ananthi. This averment has not been denied by the respondent. When the respondent is able to maintain another woman and child, he is equally responsible to maintain his legally wedded wife. It is not in dispute that the petitioner is residing with her parents in the same village and therefore, the question of a separate rental house is not required and moreover, the petitioner is not having any children to lead a separate life.

14. Therefore, the portion of order of the appellate court in so far as setting aside the rental amount is confirmed. However, the order of modification of the maintenance is not justified, without any valid reasons and therefore, this portion of the order of maintenance is set aside and the order of the trial court ordering maintenance of Rs.3,000/- from the date of petition is upheld. Infact, in the present day situation, a sum of Rs.3,000/- is very meagre to maintain herself and there is no justification in reducing this maintenance ordered by the trial court. Further, the respondent has not even paid the reduced portion of maintenance amount to the petitioner and therefore, this Court is not inclined to modify the other portions of the orders on reducing the compensation amount.

15. Accordingly, this revision petition is allowed. The order of the appellate Court in modifying the maintenance and compensation amount stands set aside and the order of the trial Court is upheld.

16. Registry is directed to return the papers to the trial Court and to issue notice to the respective parties to ensure the orders of the trial Court has been complied with.

Sd/-

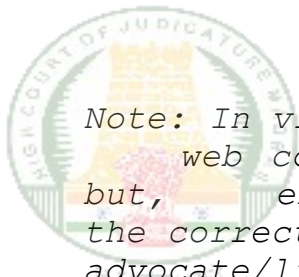
Assistant Registrar

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/ /2021

Sub Assistant Registrar(CS)

TM



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To

1.The III Additional District and Sessions Judge, Thanjavur @
Pattukkottai.

2.The District Munsif cum Judicial Magistrate, Orathanadu.

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai (Records) (2C)

**Crl.R.C. (MD) .No.226 of 2016
11.09.2020**

MA (CO)

KK (08.03.2021) 5P 5C