



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2020

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.R.C. (MD) .No.48 of 2016

and

Crl.M.P (MD) No.994 of 2016

G.Ashokkumar

.. Petitioner/Respondent

Vs.

P.N.Ilamathi

... Respondent/Petitioner

PRAYER: Criminal Revision Case, filed under Section 397 and 401 of the Criminal Procedure Code, to set aside the order made in M.C.No.15 of 2005 on the file of the Additional District Munsif cum Judicial Magistrate, Manamadurai, dated 30.11.2015.

For Petitioner : Mr.D.Venkatesh
For Respondent : Mr.L.Shaji Chellan

ORDER

This Criminal Revision Case has been filed as against the order dated 30.11.2015, passed in M.C.No.15 of 2005 by the learned Additional District Munsif cum Judicial Magistrate, Manamadurai.

2. The petitioner, who is the husband of the respondent, has successfully evaded the maintenance application nearly for 15 years. The marriage between the petitioner and the respondent was solemnized in the year 2004 and thereafter, the respondent is said to have lived together along with the petitioner and his parents at Vedapatti till 20.01.2005. The petitioner got a job opportunity in Hosur and now, he is working as an Engineer in a Private Company at Hosur.

3. The respondent/wife filed a petition for maintenance under Section 125 Cr.P.C stating that this petitioner/husband deserted her and he has also taken her jewels and srithana articles with him and she was also driven out from the matrimonial home on 20.01.2005. Therefore, she lodged a complaint before the Manamadurai All Women Police Station and a case has also been registered as against the petitioner in Crime No.3 of 2005 for the offences punishable under Sections 498 (A) and 406 IPC. This petitioner also filed a petition before the Family Court,



Coimbatore, in H.M.O.P.No.165 of 2005 for restitution of conjugal rights, but, when the matter was listed for counselling, this petitioner/husband was deliberately absent and therefore, H.M.O.P.No.165 of 2005 was dismissed for default. Since the respondent/wife was depending on her parents for her livelihood, she filed a petition in M.C.No.15 of 2005 for maintenance before the learned Additional District Munsif cum Judicial Magistrate, Manamadurai. The said maintenance petition was allowed by the trial Court, vide order dated 30.11.2015. Aggrieved over the same, the present Criminal Revision Case has been filed on the following grounds.

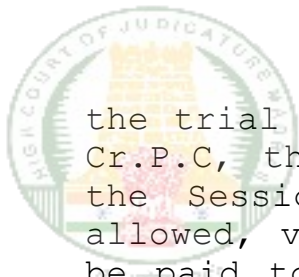
(i) The Trial Court passed the impugned order without affording an opportunity to recall the evidence of respondent/PW1 for cross examination. Though the recall was permitted by the learned District and Sessions Judge, Sivagangai, in Crl.R.P.No.2 of 2013, vide order dated 28.10.2015, the trial Court, without providing an opportunity, proceeded with the maintenance case and passed the impugned order.

(ii) The order passed by the learned District and Sessions Judge, Sivagangai, in Crl.R.P.No.2 of 2013 was duly informed by the petitioner to the learned Judicial Magistrate, Manamadurai, through memos, dated 21.11.2015 and 25.11.2015. However, the certified copy of the order passed in Crl.R.P.No.2 of 2013 by the learned District and Sessions Judge, Sivagangai, was not made ready by then. Despite the same, the trial Court allowed the maintenance petition in a hurried manner, without affording opportunity to the petitioner to cross examine the PW1.

(iii) The respondent/wife had voluntarily left the matrimonial home and this petitioner had also filed a petition for restitution of conjugal rights. But, without considering this scenario, the trial Court had passed the impugned order.

(iv) The documents marked on both sides in M.C.No.15 of 2005 ought to have been considered by the trial Court and further, the documents marked on the side of petitioner in Exs.R1 to R4 exposed the intention of the respondent/wife not to live her matrimonial life and the petition is filed only to harass the revision petitioner.

4. Per contra, the learned counsel for the respondent would submit that the petitioner has successfully evaded the maintenance petition for more than seven years and at the fag end of the trial, he filed a petition under Section 311 Cr.P.C. to recall the evidence of PW1/wife for further cross examination as if certain points have been omitted. But, the same was dismissed by the trial Court, vide order dated 21.11.2012. As against the order of

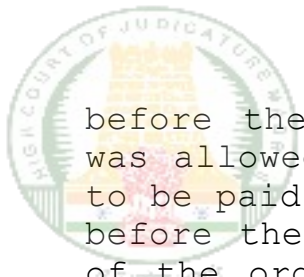


the trial Court passed in the petition filed under Section 311 of Cr.P.C, the revision petitioner filed a revision petition before the Sessions Court in Crl.R.P.No.2 of 2013 and the same was allowed, vide order dated 28.10.2015 with a cost of Rs.5,000/- to be paid to the respondent within a period of one month from the date of receipt of the copy of the order. But, wantonly, the petitioner, without obtaining the certified copy and also without paying the cost as directed by the Sessions Court, filed a memo as if he is intending to challenge the order of the Sessions Court on the cost. That apart, the petitioner has also intimidated the respondent when she attended the hearing on the previous occasions and manhandled her and therefore, a petition for direction was filed before this Court in Crl.O.P.(MD).No.12657 of 2014, wherein, this Court, vide order dated 25.08.2015, issued a direction to the trial Court to complete the trial within a stipulated time. The petitioner, without filing necessary application to recall the order passed in Crl.O.P.(MD).No.12657 of 2014, once again adopted the delaying tactics. Therefore, the trial Court has passed the order on 30.11.2015. He would further submit that the petitioner has not disputed the marriage and he is working as an Engineer in a leading private company and earning sufficient income. On the other hand, the respondent/wife is depending on her parents for her livelihood.

5. Heard Mr.D.Venkatesh, learned counsel for the petitioner and Mr.L.Shaji Chellan, learned counsel for the respondent and also perused the available records.

6. The petitioner has not denied the marriage solemnized between the respondent. The petitioner has also filed a petition before the Family Court, Coimbatore, for restitution of conjugal rights. Admittedly, he is also working as an Engineer in a leading Private Company. The only ground on which this Criminal Revision Case is filed that though an order has been passed by the Sessions Court permitting him to recall PW1, the Trial Court proceeded with the trial, without affording an opportunity and passed the impugned order.

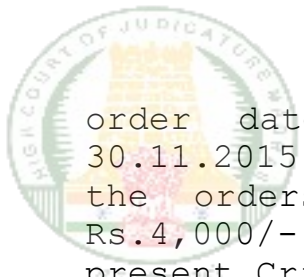
7. The maintenance petition was filed by the wife in the year 2005. Only in the year 2015, i.e. after a lapse of 10 years, that too at the fag end of the trial, the petitioner filed an application under Section 311 of Cr.P.C. to recall the P.W.1/wife for further cross examination. In the petition filed under Section 311 Cr.P.C. he has not assigned any valid reasons for recalling PW1 for further cross examination and therefore, the trial Court, by its order, dated 21.11.2012, dismissed the petition filed by the petitioner in Crl.M.P.No.8781 of 2011 for recalling the evidence of P.W.1/wife. As against that order, this petitioner preferred a revision petition in Crl.R.P.No.2 of 2013



before the District and Sessions Court, Sivagangai and the same was allowed vide order dated 28.10.2015 with a cost of Rs.5,000/- to be paid by the revision petitioner to the respondent/petitioner before the trial Court within one month from the date of receipt of the order. The relevant portion of the order of the Sessions Judge is extracted hereunder.

"In the result, this Criminal Revision Petition is allowed and the order of the trial Court in Crl.M.P.No.8781/2011 in M.C.No.15/2005, dated 21.11.2012 is set aside. The petition in Crl.M.P.No.8781/2011 in M.C.No.15/2005, dated 21.11.2012 will be allowed on payment of costs of Rs.5,000/- to be paid by the revision petitioner/petitioner/ respondent to the respondent/respondent/ petitioner before the trial Court within one month from the date of receipt of this order and on payment of cost the trial Court is directed to allow the petition in Crl.M.P.No.8781/2011 and proceed with the case and permit the revision petitioner/Crl.M.P.No.8781/2011 and proceed with the case and permit the revision petitioner/petitioner/ respondent to cross examine the witness and complete the trial within three months from the date of receipt of this Court. If cost is not paid within one month, the trial Court shall dispose the application on merits."

7.1. Thereafter, the petitioner filed a memo before the trial Court on 21.11.2015 about the order passed by the Sessions Court and the costs of Rs.5,000/- to be paid pursuant to this order. However, he sought some more time as the certified copy of the order, passed in Crl.R.P.No.2 of 2013, was not made ready by then. In the mean time, the respondent/wife has approached this Court for transferring the maintenance case on the file of the learned Judicial Magistrate, Manamadurai to the file of the learned Judicial Magistrate, Coimbatore, apprehending danger to her life and limb at Manamadurai. The said Criminal Original Petition was dismissed with a direction to the concerned Judicial Magistrate, Manamadurai to dispose of the maintenance case within a period of two months from the date of the receipt of copy of the order and therefore, the learned Judicial Magistrate, by referring the orders passed by the Honourable High Court in Criminal Original Petition No.12657 of 2014, rejected the request of the petitioner and posted the case as finally on 25.11.2015. On 25.11.2015, the petitioner filed another memo that he intended to prefer a revision petition before the Honourable High Court at Madurai Bench as he is unable to pay the cost amount of Rs.5,000/-. This memo was also rejected by the learned Judicial Magistrate, by



order dated 25.11.2015 and posted the case for orders on 30.11.2015. On 30.11.2015, the learned Judicial Magistrate passed the orders in the maintenance case awarding maintenance of Rs.4,000/- to the respondent/wife. Aggrieved over the same, the present Criminal Revision Case is filed.

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8. The marriage between the petitioner and the respondent is admitted and his position as Engineer and drawing the salary of Rs.25,000/- was also admitted by the petitioner before the trial Court, when he was cross examined. The petitioner has not adduced any evidence that this respondent is having sufficient means to maintain herself. The grievance of the petitioner is that the trial Court ought to have provided an opportunity to him to agitate the order of the Sessions Court before this Court, but, the trial Court, without affording opportunity, disposed of the maintenance case in a hurried manner.

9. The maintenance petition was filed by the wife/respondent in the year 2005 and it has also been dragged on by the husband/petitioner for nearly 10 years. Further, by filing this petition, the petitioner has also dragged on another five years. The conduct of the petitioner in compliance of the order of the Sessions Court would also expose his conduct in dragging the matter successfully.

10. While entertaining this Criminal Revision Case, this Court has also shown some indulgence by granting an order of Interim stay with a direction to the petitioner to pay 50% of maintenance amount as ordered by the trial Court in M.C.No.15 of 2005, dated 30.11.2015 directly to the respondent by way of Demand Draft or Pay Order on or before 7th day of every succeeding English calendar month. This Court has also directed the petitioner to pay 50% of arrears of maintenance amount already ordered by the trial Court. But this petitioner has not paid the amount as directed by this Court and therefore, on 15.03.2016, this Court passed an order as follows:

"The learned counsel for the respondent has reported that conditional order passed on 04.02.2016 has not been complied with by the petitioner herein. The learned counsel for the petitioner also concedes the said statement made on behalf of the respondent by the learned counsel for the respondent.

Already Self-Speaking, and Self-Working interim conditional Order of Stay has been passed on 04.02.2016.



Liberty is granted to the respondent to proceed further with Case before the Lower Court, as the Conditional Order has not been complied by the Petitioner herein."

11. Even today, there is no response from the learned counsel for the petitioner on the compliance of the order passed by this Court. The grounds raised by this petitioner are not tenable and the conduct of the petitioner really shows that this petitioner is particular in dragging the matter by one way or other and therefore, this Criminal Revision Case is liable to be dismissed.

12. Accordingly, this Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is also closed.

13. This Court does not preclude the respondent from filing any application for enhancement of maintenance amount before the trial Court.

Sd/-

Deputy Registrar (ACCOUNTS)

// True Copy //

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Sub Assistant Registrar (CS)

TM/OGY

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Additional District Munsif cum
Judicial Magistrate, Manamadurai.

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