



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.09.2020

Delivered on : 23.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

WEB COPY

CRL OP(MD) No.13629 of 2018

and

Crl.M.P. (MD) No.6139 of 2018

Jeyaraman, S/o.Ellappa Nayakar

... Petitioner

Vs.

Jeyanthi, W/o.Jeyaraman

... Respondent

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the entire records in connection with the order passed in Crl.R.C.No.27 of 2017, dated 22.01.2018, by the learned Additional Sessions Judge, Karur, modifying the order, dated 30.05.2017, passed in M.C.No.16 of 2015, by the learned Chief Judicial Magistrate, Karur, and set aside the same as illegal.

For Petitioner

: Mr.V.Ramamurthy

For Respondent

: Mr.K.Hariharan

#### ORDER

This Criminal Original Petition has been filed for the relief to call for the entire records in connection with the order dated 22.01.2018, passed in Crl.R.C.No.27 of 2017, by the learned Additional Sessions Judge, Karur, modifying the order, dated 30.05.2017, passed in M.C.No.16 of 2015, by the learned Chief Judicial Magistrate, Karur, and set aside the same as illegal.

2.The case of the petitioner is that he is the husband of the respondent viz., Jeyanthi. The marriage between the petitioner and the respondent was solemnized on 28.05.1999 as per Hindu rites and customs. Due to the said wedlock, the respondent gave birth to two male children. Thereafter, a dispute has arisen between the petitioner and the respondent. Resultantly, the respondent left the matrimonial home and joined with her parents and as of now, the elder son viz., Hariharan is in the custody of the respondent and the younger son viz., Arun is in the custody of the petitioner. In the year 2015, the respondent herself and on behalf of her elder son filed an application in M.C.No.16 of 2015 under Section 125 Cr.P.C. before the Chief Judicial Magistrate Court, Karur, seeking to direct the petitioner to pay a sum of Rs.20,000/- per month towards maintenance to them. While at the time of disposing the said application, the learned Chief Judicial Magistrate, Karur, vide order dated 30.05.2017, directed the petitioner to pay a sum of



Rs.2,000/- and Rs.4,000/- towards maintenance to the respondent and her elder son viz., Hariharan, respectively.

3. Aggrieved over the same, the respondent herein preferred a revision in Crl.R.C.No.27 of 2017, before the Additional Sessions Court, Karur. After elaborate enquiry, the learned Additional Sessions Judge, Karur, vide order dated 22.01.2018, modified the order dated 30.05.2017, passed in M.C.No.16 of 2015, by the learned Chief Judicial Magistrate, Karur, enhancing the maintenance amount awarded to the petitioner and her elder son to Rs.5,000/- and Rs.9,000/-, respectively.

4. Challenging the said order dated 22.01.2018, passed in Crl.R.C.No.27 of 2017, the petitioner is before this Court with the present Criminal Original Petition.

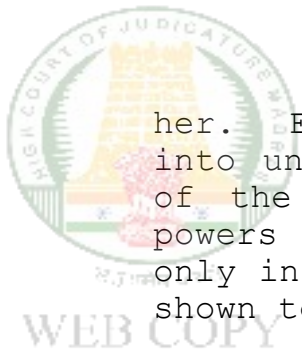
5. Now, the first and foremost contention raised by the learned counsel appearing for the petitioner is that the respondent - wife is having sufficient means for maintaining herself. Being the Beautician, the respondent - wife continued her profession and earned much money. Further, from the immovable property owned by her, she obtained a reasonable income and therefore, the findings arrived at by both the Courts below as the respondent is not having any means for maintaining herself is not acceptable one.

6. In respect of the above said submission, it is relevant and useful to see the judgment of this Court in the case of **S.Pethaiyan Vs. Jothi** reported in **2004 Cri. L.J. 1142**, wherein it has been held as follows:-

'5. The husband, once again questioning the said maintenance order, has filed this petition, to quash the order passed by the Court below in M.C.No.8/96, which was confirmed in the C.R.P. The grounds raised in this petition that the respondent-wife is having means to maintain herself was finally decided by the Court, concluding that the wife has no means and therefore, question or reappraising the evidence, by this Court under Section 482 Cr.P.C., does not arise for consideration. On the ground of desertion also, the grant of maintenance order is questioned, which was available to the husband and in fact, he raised the same before the Courts below which was not accepted and therefore, the same is not liable to be agitated once again before this Court. ....'

7. Further, in the case of **Mast Ram vs. Shanthi Devi** reported in **2002 Cri. L.J. 1616**, the High Court of Himachal Pradesh has held as follows:-

'8. Be it stated that there are concurrent findings of two Courts below that the respondent does not possess means to maintain herself and that the petitioner is not maintaining

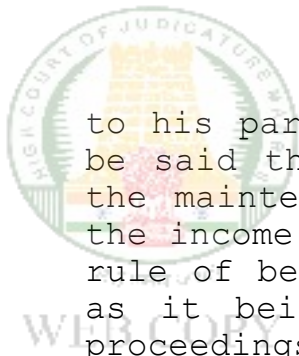


her. Evidently, the merits of such findings cannot be gone into under the provisions of S.482 of the Code and Art. 227 of the Constitution which has a very narrow scope. The powers of this Court sought to be invoked, can be exercised only in the rarest of the rare cases where grave injustice is shown to have been caused and requires to be undone.''

8. So, applying the principles set out in the above referred judgments to the case on hand, I am of the view that by way of filing the Petition under Section 482 Cr.P.C., the petitioner herein cannot challenge the findings arrived at by the Courts below in respect of the question whether the respondent - wife is having sufficient means to maintain herself or not. Accordingly, the first contention raised by the learned counsel appearing for the petitioner is negatived.

9. The second submission made by the learned counsel appearing for the petitioner is that while at the time of deciding the revision, the revisional Court came to the conclusion that the petitioner is having the properties, worth about Rs.30 Lakhs. In this regard, the respondent has failed to prove that sufficient income is derived from the said properties. Further, as confirmed by the Courts below, the petitioner is having many more properties, the said affirmation is not based upon any oral and documentary evidence. The learned counsel appearing for the petitioner would further submit that the conclusion arrived at by the revisional Court that the petitioner is having an income of Rs.1,00,000/- per month is baseless and bereft of materials. In fact, it is admitted on the side of the respondent - wife that the younger son, who is now with the petitioner, is having some heart ailment and differently-abled boy. The categorical evidence of the petitioner - husband, who was examined as R.W.1, that his income is Rs.10,000/- per month alone.

10. Now, upon considering the said submissions, it is true that in order to prove the income having by the petitioner - husband, no substantial document has been produced on the side of the respondent - wife. However, during the time of cross-examination, the petitioner - husband himself admitted that at the time of marriage, he was running a Partnership Finance business at Thiruvavarur. It is the contention of the petitioner that, as of now, he is working as Accountant in a Finance Company, situated at Thiruvavarur. Of course, no material has been produced on the side of the respondent to show the income of the petitioner. In the cross-examination, the petitioner had clearly stated that he was constantly selling some immovable properties from the year 2013. It is further stated by the petitioner that during the time of cross-examination as in the year 2004 itself, he closed the Finance Company run by him and it is not correct to state that the same has not been stated either in the counter affidavit or in the proof affidavit filed before the Trial Court. Further, in respect of sale of land, the share which belongs



to his parents, was not handed over to them. Therefore, it cannot be said that the petitioner is not having sufficient means to pay the maintenance to the respondent - wife. Further, in respect of the income having either by the petitioner or by the respondent, the rule of best evidence is not applicable in maintenance proceedings, as it being an enquiry in real sense. This being quasi civil proceedings, probabilities are required to be brought on record. This enlarges the scope of drawing reasonable inference as it is being done in the case of an able-bodied man. In fact, the husband is an able bodied person, it has to be inferred that he has the means to pay the maintenance. Even the husband may be insolvent or a professional beggar, or a minor or a monk, but he must support his wife so long as he is able bodied and can eke out his livelihood. Where the husband is an able bodied person, direction to him to pay the maintenance allowance to his wife is a proper one. Accordingly, the petitioner is having the duty to pay the maintenance to his wife - respondent.

11. In respect of quantum of maintenance awarded by the revisional Court, it is not in dispute that Rs.5,000/- was allowed as monthly maintenance and directed the petitioner to pay the same to the respondent. In otherwise, now the respondent had filed one another application before the Civil Court, in which, she has also claimed enhancement of maintenance. Therefore, it cannot be said that Rs.5,000/- awarded by the revisional Court is an excessive one.

12. In the light of the above discussions, I am of the considered opinion that there are no circumstances, which are necessary for interfering into the award passed by the revisional Court. Accordingly, this Criminal Original Petition is dismissed. If the petitioner has paid any excess amount, the same should be adjusted while at the time of paying the future maintenance to the respondent - wife.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

smn2

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, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Additional Sessions Judge,  
Karur.

2.The Chief Judicial Magistrate,  
Karur.

Cr1.O.P. (MD) No.13629 of 2018

CRL OP (MD) No.13629 of 2018  
23.09.2020

SCR (CO)  
KK (01.10.2020) 5P 3C