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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.R.C.NO.729 OF 2015

IN

M.P.NO.1 OF 2015

A.V.Sagunthala

.. Petitioner/Respondent

Vs.

R.Moorthy

.. 2nd Respondent/
De-facto complainant

Prayer: Petition filed under Section 397 r/w 401 of Cr.P.C., to set aside the judgement dated 25.05.2015 made in Crl.R.P.No.11/2014 on the file of Mahila Court(Fast Track) Ootacamund, in M.C.No.6/2011 on the file of Judicial Magistrate, Coonoor, dated 26.02.2014 by allowing the above Criminal Revision Petition.

For Petitioner : S.Meenakumari

For Respondent : Mr.Srinath Sridevan

O R D E R

The petitioner has filed this petition seeking to set aside the judgement dated 25.05.2015 made in Crl.R.P.No.11/2014 on the file of Mahila Court(Fast Track) Ootacamund, reversing the order passed in M.C.No.6/2011 on the file of Judicial Magistrate, Coonoor, dated 26.02.2014 by allowing the above Criminal Revision Petition.

2. The case of the prosecution is that the marriage of the Petitioner and the Respondent was solemnized in the year 1980. Soon after the marriage the Respondent tortured the Petitioner for dowry and harassed her continuously and chased her away and refused to take care of her. Thereafter, the Petitioner worked in different places as a Maid to make her ends meet. Hence,



the Petitioner filed a Maintenance Petition and thereafter ended in compromise. Again the husband/respondent failed to take care of the Petitioner and since the petitioner is getting weak and unable to maintain herself, she again filed a Maintenance petition in M.C.No.6/2011 and the trial court directed the respondent to pay Rs.3000/- per month to the petitioner to meet her expenses. Thereafter the respondent filed a petition for Restitution of Conjugal Rights and the same was allowed, but the petitioner refused to live with him. Therefore, he obtained a Decree of exparte divorce and subsequently divorce was granted and thereafter they are living separately. After a lapse of so many years, petitioner filed a maintenance case which is not sustainable. But, the lower court allowed the said revision petition without considering the facts of the case properly. Against which the present petition has been filed.

3. Learned counsel appearing for the petitioner submitted, while reiterating the grounds raised in the petition submitted that the petitioner is entitled to maintenance u/s 125 Cr.P.C. and the trial court has properly appreciated the contention and granted maintenance, which has been wrongly interfered with by the lower appellate court. It is the submission of the learned counsel for the petitioner that the wife is entitled to maintenance at the hands of her husband and, therefore, the order passed by the trial court in M.C. No.6/2011 may be restored.

4. Per contra, learned counsel appearing for the respondent submitted that inspite of the order passed in the petitioner filed for restitution of conjugal rights, the petitioner failed to join with the respondent herein. The respondent was all along willing to live with the petitioner, but it is only the petitioner, who deserted him and did not join him and, therefore, the petitioner cannot take recourse to the provisions of Section 125 Cr.P.C. Further, it is the submission of the learned counsel for the respondent that the petitioner is not entitled to maintenance in view of the provision of sub-section (4) to Section 125 Cr.P.C. and, therefore, no interference is warranted with the order passed by the lower appellate court.

5. This Court paid its careful attention to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

6. The facts in the present case are not in dispute. The marriage of the parties was solemnised in the year 1980 and after the lapse of about three decades, the present petition for maintenance has been filed on the ground that the petitioner left the respondent in view of dowry harassment. However, as



pointed out by the lower appellate court, the petitioner has not taken the plea of dowry harassment over the last three decades and the same has been taken only at the time of institution of the maintenance case. No complaint has also emanated from the petitioner relating to dowry harassment.

7. It is also to be pointed out that initially the respondent had filed petition for restitution of conjugal rights, which was allowed. But the petitioner did not obey the said order and join the respondent, which led the respondent to file the petition for divorce, which has been decreed exparte. This also reveals that the petitioner has not obeyed the order passed by the court.

8. In this backdrop, the submission of the learned counsel for the respondent placing reliance of Section 125 (4) Cr.P.C. assumes significance. For better appreciation, the relevant provision is quoted hereunder :-

"125. Order for maintenance of wives, children and parents.

.....

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

9. From the above provision it is explicitly clear that if a wife refuses to live with her husband without any sufficient reason, that would be a ground to refuse maintenance. In the case on hand, the respondent had filed a petition for restitution of conjugal rights which was allowed in his favour, but the wife did not join her husband, which resulted in the filing of the divorce petition by the respondent, which has since been decreed exparte. However, only after the exparte divorce decree, the petitioner herein has filed the petition claiming maintenance.

10. Once the petitioner herein has refused to obey the order of the court by joining with the respondent when the petition for restitution for conjugal rights was ordered, the petitioner forfeited her right to claim maintenance in view of the bar u/s 125 (4) Cr.P.C. Therefore, the lower appellate court has rightly rejected the claim of the petitioner herein for maintenance and set aside the order of maintenance passed by the trial court and, therefore, this court sees no reason to interfere with the same.



11. Accordingly, this petition is devoid of merits and the same is dismissed. However, liberty is granted to the petitioner to agitate her rights before the appropriate forum by filing appropriate petition challenging the grant of exparte divorce and it is left open to the petitioner to raise all the grounds in the said proceedings. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

skt

To

1. The Judicial Magistrate, Coonoor.
2. The Judge,
Mahila Court (Fast Track), Oatacamund.

+lcc to Mr.Srinath Sridevan, Advocate, S.R.No.54452

Cr1.R.C.No.729 of 2015

KSM(CO)
RLP(01/12/2021)