

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:02.02.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.1148 of 2020

Prema

... Petitioner

.Vs.

Raghunathan

... Respondent

PRAYER : Criminal Revision case filed under Sections 397 r/w 401 or Cr.P.C. to call for the records pertaining to the order in M.C.No.17/2018 dated 27.12.2019, on the file of the Judicial Magistrate, Uthangarai, and set aside the same.

For Petitioner : No appearance

ORDER

This Criminal Revision has been filed against the order in M.C.No.17/2018 dated 27.12.2019, passed by the learned Judicial Magistrate, Uthangarai.

2. The petitioner is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was solemnized on 22.05.1997 and out of the wedlock they were blessed with two daughters and due to misunderstanding both the petitioner and the respondent are living separately. Therefore, the petitioner along with her daughter filed maintenance case before the learned Judicial Magistrate, Uthangarai in M.C.No.17/2018 under Section 125 of Cr.P.C.. After enquiry, the said case was dismissed and as against which, the wife has filed this revision before this Court.

3. According to the petitioner, the marriage between the petitioner and the respondent was solemnized on 22.05.1997 and out of their wedlock, two female children were born to them. Thereafter, due to misunderstanding between the petitioner and the respondent the petitioner and her daughter were living separately and she has no means to maintain herself as well as her daughter. Therefore, the respondent/husband is liable to pay maintenance to her.

4. According to the respondent/husband, the petitioner left matrimonial home without any valid reason, even prior to that she filed maintenance case in M.C.No.8/2017 before the learned Magistrate and the same was dismissed as withdrawn and there is no cause of action to the present case and the petitioner has got sufficient means to maintain herself and further the respondent purchased the house in the name of the petitioner by obtaining loan from the financial institution and from other persons and now the petitioner living in the said house and also earning a sum of Rs.50,000/- per month. As far as daughter is concerned, she is a major and not minor and as per the Birth certificate her Date of Birth is 03.05.2000, maintenance case was filed on 05.10.2018 and she has completed 18 years 5 months and two days. Since she attained majority the petitioner has no loco standi to file case on behalf of her daughter who has completed 18 years. She has also admitted in the deposition during the evidence that the daughter has not given Power of Attorney or authority to the petitioner to file the case. Since, the daughter attained majority, she can separately claim maintenance, but without doing so, she continued to prosecute the case through her mother without signing in the vakalat and without giving power of attorney to the petitioner to file the case on behalf of her. Therefore, the learned Magistrate dismissed the petition as against the daughter. So far as the petitioner is concerned, since she is having sufficient means as per the Section 125 Cr.P.C., wherein when the wife has sufficient means herself, she cannot claim maintenance and in this case admittedly the petitioner owns the property worth 50 lakhs and she is getting income from the house property and other properties and therefore she is able to maintain herself and hence she is not entitled to get maintenance.

5. No representation on either side. Since the case involved under Section 125 Cr.P.C. itself is a summary procedure, this Court is inclined to dispose of this revision, even without hearing both the parties.

6. A perusal of entire records shows that petitioner is the wife and the respondent is the husband. The petitioner along with her daughter has filed the petition in M.C.No.17/2018 before the learned Judicial Magistrate, Uthankarai under Section 125 Cr.p.c.,. The petitioner was shown as the first petitioner in the Maintenance case and she has admitted during evidence that she got a house property worth about 50 lakhs and she is receiving rental income from house property and other properties and therefore she is not a woman who is unable to maintain herself and therefore as per Section 125 Cr.P.C, if the wife is unable to maintain herself, she can claim maintenance from her husband who is having sufficient means. Therefore the learned

Magistrate finding that the petitioner has got means to maintain herself had dismissed the petition filed by her. The petitioner/wife admitted that she is in occupation of the house worth about 50 lakhs and also further the learned Magistrate found that the petitioner receiving a sum of Rs.4,000/- income and also having means to maintain herself had dismissed the petition as against the wife. As far as daughter is concerned the trial Court found that since she completed 18 years and became major, she can file petition separately and without giving power of attorney to the mother, she cannot file application with her mother and further all her educational expenses were borne by her father. Therefore, this Court while exercising revisional jurisdiction cannot conduct roving enquiry at this stage. A reading of the entire materials shows that the learned Magistrate has given cogent reasons for dismissal of the maintenance case. This Court does not find illegality or infirmity in the order passed by the Court below and this revision case is liable to be dismissed.

Accordingly, this criminal revision stands dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
The Judicial Magistrate, Uthangarai

Crl.R.C.No.1148 of 2020
02.02.2021

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