



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.10.2021
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1120 of 2017
And
Crl.M.P.No.10563 of 2017

C.Samiselvakirubakaran ... Petitioner/ Respondent

Vs.

S.Jessy ... Respondent/ Petitioner

Prayer:

Petition filed under Section 397 and 401 of Criminal Procedure Code, seeking to call for the records and set aside the order dated 08.02.2017 made in M.C.No.5 of 2014 on the file of the Principal Family Court, Coimbatore, which is a part of the common order made in D.O.P.No.1159 of 2013 and M.C.No.5 of 2014 on the file of the Principal Family Court, Coimbatore.

For Petitioner : Mr.P.M.Duraiswamy
For Respondent : Ms.V.S.Usha Rani

O R D E R

The petitioner has filed this petition seeking to call for the records and to set aside the order dated 08.02.2017 made in M.C.No.5 of 2014 on the file of the Principal Family Court, Coimbatore, which is a part of the common order made in D.O.P.No.1159 of 2013 and M.C.No.5 of 2014 on the file of the Principal Family Court, Coimbatore.

2.The facts of the case is that the marriage between the petitioner and the respondent was solemnized on 10.07.2013 at Coimbatore as per the Christian Rites and Customs. The said marriage is the second marriage for the petitioner. Thereafter, dispute arose inbetween them and they are living separately. The petitioner filed petition seeking restitution of conjugal rights before the Family Court, Coimbatore in D.O.P.No.1159 of 2013. The respondent filed M.C.No.5 of 2014 before the Family Court, Coimbatore seeking a sum of Rs.5,000/- per month as maintenance.

3.The petitioner alleged that soon after the marriage, the respondent fell ill and was not able to do the household work and she insisted to have a separate house in their locality. The respondent alleged that the petitioner's father tried to



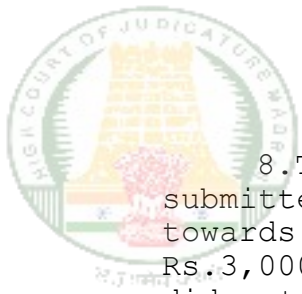
misbehave with her and considering the family respect, she tolerated, however, he threatened that she got married at the age of 37 years and if she discloses his behaviour, he will now allow her to live with the petitioner. It is further alleged that even the petitioner's mother encouraged her husband's activities and hence the respondent asked the petitioner to leave her at her sister's house.

4.The learned Principal Judge, Family Court, Coimbatore heard both the petitions together and allowed D.O.P.No.1159 of 2013 in part with a condition to set up a separate residence not in the location of the petitioner's parents residence and also allowed M.C.No.5 of 2014 in part directing the petitioner to pay a sum of Rs.3,000/- per month to the respondent towards maintenance from the date of petition. Aggrieved against the maintenance awarded in favour of the respondent, the petitioner has filed this revision.

5.The learned counsel appearing for the petitioner submitted that no serious allegations were made against the petitioner and the only allegation made against the petitioner is that the petitioner did not warn the indecent attitude of his father and his mother also did not care about the same, hence, the petitioner did not give sufficient protection to the respondent's dignity. However, the Trial Court allowed the petition seeking restitution of conjugal rights filed by the petitioner and the petitioner sent letters calling her to live along with him even thereafter the respondent did not come forward to live with him.

6.The learned counsel appearing for the petitioner further submitted that during the pendency of this revision, the petitioner's parents passed away and the petitioner alone is living in the house and hence, now there is no threat for the respondent to live with the petitioner. The learned counsel further submitted that there is no allegation against the petitioner with regard to cruelty and the petitioner is ready to take care of the respondent and the petitioner also assure that he will take care of all the needs of the respondent.

7.The learned counsel appearing for the respondent submitted that though the main allegation is against the petitioner's father that he tried to misbehave with the respondent, it is also alleged that the petitioner's brother in law told that the respondent is in mental depression and if she commits suicide, the petitioner's family will be put in trouble and asked the respondent's brother and sister in writing that they will not take any legal steps against the petitioner's family if she commits suicide. When such allegation is made, forcing the respondent to live along with the petitioner is not sustainable since there is no safety and security for the respondent.



WEB COURT

8.The learned counsel appearing for the respondent further submitted that though the respondent claimed a sum of Rs.5,000/- towards maintenance, the Trial Court awarded only a sum of Rs.3,000/- towards maintenance. Even thereafter, the petitioner did not pay any amount towards maintenance. The learned counsel further submitted that as per Section 125(5) of Cr.P.C., if there is any development, the petitioner has to file appropriate petition before the Trial Court. Instead of filing petition before the Trial Court, he has raised the issue before this Court, which is not sustainable.

9.The facts of the case and the relationship between the parties is not disputed. This Court perused the order passed by the Trial Court. Admittedly, there is no matrimonial dispute inbetween the petitioner and the respondent/ wife. The entire allegation is against the petitioner's father that he misbehaved with the respondent and the same was not condemned by the petitioner and his mother. Further there is no allegation with regard to the first marriage of the petitioner though it is the second marriage of the petitioner with the respondent. Thereafter is no serious allegation as against the petitioner and there is no allegation of cruelty or adultery. The main allegation is that the petitioner did not warn his father thereby the respondent felt that is not safe to continue the relationship with the petitioner and started living with her sister.

10.During the pendancy of this revision, the petitioner's parents have passed away and the petitioner alone is living in the house and now there is no threat for the respondent to live with the petitioner. The petitioner is also ready to take care of the respondent, however, the learned counsel appearing for the respondent, on instructions, submit that the respondent is not willing to go along with the petitioner, however, insists for maintenance amount.

11.In this background this Court has to consider the provisions of Section 125 of Cr.P.C. For better appreciation, Sections 125 (4) and 125 (5) of Cr.P.C. are extracted hereunder:

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

(4) No wife shall be entitled to receive an allowance 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

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are



living separately by mutual consent, the Magistrate shall cancel the order"

12.The above provisions makes it clear that no wife is entitled to receive any allowance from the husband if she refuses to live with him without any sufficient reason. In the present case, the Trial Court allowed the petition seeking restitution of conjugal rights filed by the petitioner with a condition to set up a separate residence not in the location of the petitioner's parents residence and the petitioner has sent letters calling the respondent to live along with him even thereafter the respondent did not come forward to live with him. Further, during the pendency of this revision, the petitioner's parents have passed away and the petitioner alone is living in the house, even now the respondent is not willing to live along with the petitioner.

13.Hence, it is clearly known that the respondent refuses to live along with the petitioner without any sufficient reason. Therefore, the respondent is not entitled for any maintenance and this Court has no hesitation to set aside the order dated 08.02.2017 made in M.C.No.5 of 2014 by the learned Principal Judge, Family Court, Coimbatore.

14.This revision is allowed and the order dated 08.02.2017 made in M.C.No.5 of 2014 on the file of the Principal Family Court, Coimbatore, is hereby set aside. However, this order will not stand on the way of the respondent to live along with the petitioner, if she decides to live along with him in future. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

pri
To

1.The Principal Judge,
Family Court,Coimbatore.

+1 cc to Ms.V.S.Usha Rani, Advocate Sr.NO. 51681

+1 cc to Mr.P.M.Duraiswamy, Advocate Sr.NO. 52310

Crl.R.C.No.1120 of 2017

And

Crl.M.P.No.10563 of 2017

RP (CO)

A.SK(27.10.2021)