

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2020
PRONOUNCED ON : 19.01.2021

CORAM

THE HONOURABLE Mr.JUSTICE G.CHANDRASEKHARAN

CRL.R.C.No.403 of 2017

Arumugam

..Petitioner/Petitioner

Vs

1.Janani Iswarya
2.Niranjan

..Respondents/Respondents

Criminal Revision Case preferred under Section 397 read with 401 Cr.P.C. to set aside the order dated 31.08.2016 passed in M.C.No.5 of 2016 on the file of the Family Court, Dharmapuri.

For Petitioner : Mr.V.Sakkarapani
For Respondents : Mr.C.Arun Kumar

O R D E R

This Criminal Revision Case is filed against the order passed in M.C.No.5 of 2016 by the learned Judge, Family Court, Dharmapuri.

2.The revision petitioner filed a petition under Section 125 Cr.P.C seeking maintenance from the respondents 1 and 2, who are his daughter and son. It is seen from the case of the petitioner that he married his wife Navajothi in 1982 and out of that wedlock, respondents were born. He was living with his family in Ponnagaram and was doing Sound System Business. Then petitioner shifted to Dharmapuri to provide good education to the respondents in 1996. He enrolled them in Chandra Bala Subramaniam School and Sri Vijay Vidhyalaya School and gave good education. He hired shop and was running 'Niranjan Engineering Works' in SR complex and doing the repair of two wheelers and lathe work. He made arrangements for the second respondent to pursue Higher Secondary Education with Vidhya Vikas in Thiruchengodu. He had done B.E., and M.E., in Sasthra University, Thanjore. Petitioner met the educational expenses. First respondent completed her +2 at Vijay Vidhyala Higher Secondary School, Dharmapuri and she completed her Teacher Training at Fathima Teacher Training School at Bangalore and she had also done B.Ed., at Sapthagiri College and M.A.,

(English) through Distance Education. So, the petitioner provided the respondents with good Education, out of the money earned through his lathe work, selling his properties and jewelleries. Petitioner was very strict with respondents while they were growing. But the respondents did not like the strict and disciplined way of life enforced by the petitioner and at the instigation of their mother, left the petitioner and living separately. Petitioner has become very old now and he is not able to work and earn as he was used to. He is staying in his shop and living with a meagre income getting out of the little work he was able to do. He is also suffering from heart disease and has to spend for medicines. First respondent is working as a Teacher in a Government School and earning more than Rs.30,000/- per month. Second respondent is working as an Assistant Professor in a College near Kancheepuram and earning more than Rs.60,000/- per month. Petitioner is not able to work and earn and maintain himself due to his old age and illness. Therefore, he filed this petition seeking maintenance.

3.The respondents denied the case of the petitioner and submitted that the petitioner lead a wayward life. Their mother and family members raised a loan of Rs.2,00,000/- and set up 'Niranjan Lathe Works'. Petitioner has not taken care and shown involvement in the lathe business and was leading an independent life of his own by developing drinking habit, illicit relationship. He was not looking up the respondents and his wife. Petitioner has not taken any steps to educate the respondents. Respondents, on their own and with the help of educational loan, pursued their studies. It is false to state that the respondents are earning monthly salary as claimed by the petitioner. In fact the petitioner deserted the respondents and his wife. He has not taken any steps to get his children, the respondents, married. There is no evidence produced to show that he is suffering from illness. He is hale and healthy and fit to work and earn and maintain himself. Hence, this petition is filed abusing the process of law to harass the respondents. Therefore, the respondents prayed for the dismissal of this petition.

4.During the enquiry, petitioner was examined as PW.1 and Exs.P1 to P6 were marked. Respondents were examined as RW.1 and RW.2 and Exs.R1 to R6 were marked. Considering the oral and documentary evidence produced, the learned Family Court Judge dismissed the claim of the petitioner. Against the said dismissal order, this Revision Case is filed.

5.Learned counsel appearing for the petitioner submitted that the petitioner was made to part with his properties in favour of his wife Navajothi. Exs.P1, P2 to P5 show that the petitioner had purchased properties in the name of Navajothi.

Ex.P6 shows that petitioner settled the property to his wife Navajothi. Despite the fact that the petitioner purchased properties in the name of his wife Navajothi and settled properties in her name, without keeping any property in his name, the petitioner was now driven out of home by the respondents and his wife. Petitioner was responsible in giving good education to the respondents and settling in their life. He spent all his money earned from lathe business towards welfare and maintenance and education of the children. Now at the fag end of his life, he is not able to physically work and earn money. Respondents have duty to maintain the petitioner, who is not able to maintain himself. Respondents are working in responsible posts and earning handsome salary. So saying, the learned counsel for the petitioner prayed for setting aside the order of the Family Court Judge and for ordering maintenance to the petitioner.

6.In reply, learned counsel for respondents submitted that it is not the respondents, who neglected the petitioner, but the petitioner who neglected the respondents and his wife for long time. The documents produced on the side of respondents Exs.R1, R3, R4, and R5 show that the respondents availed bank loan for pursuing their education. Hence, it is not correct to state that the petitioner provided funds for educating the respondents. It is seen from the evidence of PW.1, the petitioner, that he still owns land belong to his father at Ponnagaram and a house. The trial Judge found that the petitioner was earning Rs.1,000/- per day through lathe work and Rs.3,000/- per month by working as a Watchman. Therefore, the learned trial Judge found that the petitioner is not entitled to claim any maintenance. It is seen from the evidence of PW.1 that he stated "the respondents left him after the execution of the document on 24.10.2011; he is asking for his money and not the maintenance". It is submitted by the learned counsel for the respondents that the trial Judge has properly appreciated the evidence and rightly dismissed the maintenance claim and he prayed for confirming the order of the learned trial Judge and dismissing this Criminal Revision Case.

7.The point for consideration in this case is whether the order of the learned Family Court Judge dismissing the Maintenance Case in M.C.No.5 of 2016 suffers from any incorrectness, impropriety or illegality.

8.I have considered the rival submissions and perused the records.

9.It is seen from the case advanced and evidence projected that the decision had been taken on basis of oral evidence advanced by both the parties. No independent witnesses

had been examined on both the sides to corroborate the allegations and counter allegations. The fact remains that petitioner is the father of respondents and they are living separate. Petitioner's wife and mother of the respondents is living with the respondents. It is also not in dispute that the petitioner is above the age of 60 years now. Though the respondents have contended that they pursued their education through educational loan, it is common knowledge that atleast until they complete their Higher Secondary Education, they should have studied without availing any bank loan. Obviously, the expenses towards their education till the completion of Higher Secondary should have been taken care of only by petitioner. RW.1 admitted that both the respondents studied in a private school in Ponnagaram; Four years prior to the filing of the petition, petitioner and respondents were living in one roof. Though she claims that her mother made arrangements for their studies at a private school, how did her mother met the educational expenses there is no answer. Though it was claimed that the petitioner developed drinking habit and was having illicit relationship, it remained only as an allegation without there being any material evidence to prove this allegation. RW.1 admitted that her mother had no independent income. On the other hand, petitioner reiterates that he was responsible for educating the respondents. In fact, second respondent was admitted with Vidya Vikas School in Thiruchengodu, as a residential student. Though he is not able to produce any receipts for paying fees in educational institutions, the evidence produced in this case suggest and made this Court to infer that atleast until the respondents complete their Higher Secondary Education, educational expenses must have been met only by the petitioner. May be that the further educational expenses may have been met availing loan by the respondents.

10. Section 125 Cr.P.C., provides for ordering maintenance, if any person having sufficient means neglects or refuses to maintain:-

(a)
(b)
(c)
(d) his father or mother, unable to maintain himself or herself,, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as the Magistrate thinks fit,

11. This Section refers only the inability to maintain by a father or a mother as a ground for seeking maintenance from the children, who have sufficient means. We cannot look anything beyond that. In the case before hand, the petitioner, who is aged more than 60 years comes before this Court seeking

maintenance from his children, the respondents. It is no doubt that the respondents are now employed and earning a handsome salary. As per the evidence of RW.1, she earns Rs.24,000/- per month after deduction from her Gross Salary of Rs.36,000/-. Second respondent is pursuing Ph.D. His evidence was recorded in 2016 and now We are in 2020. There is every possibility that with his sound educational background, he might have got very good employment and earning. Absolutely, there is no doubt to come to a conclusion that respondents have sufficient means to maintain their father.

12. On the other hand, it is seen that the petitioner is aged more than 60 years now. He now claims that he is not able to work as he was used to work previously. He is earning Rs.3,000/- per month as a Watchman. Though he stated that he used to earn Rs.1,000/- per day previously, now he claims that he has no sufficient income. Therefore, the finding of the learned trial Judge that the petitioner admitted earning Rs.1,000/- per day is obviously not correct. Though it is true that he stated he is claiming his money and not maintenance during the course of cross examination, we cannot pick and choose this particular sentence to come to the conclusion that the petitioner is not claiming maintenance from the respondents. The entire evidence has to be read as a whole. Reading of the entire evidence clearly shows that the petitioner filed this petition claiming maintenance from the respondents. Therefore, there is no doubt that the respondents, as the children of the petitioner and having sufficient means, cannot neglect or refuse to maintain the aged father, who is not able to maintain himself. With regard to the non-production of medical records to show the illness of heart disease, mere non-production of medical records to show illness of the petitioner is not a ground to reject the claim. The aging process always coupled with onset of various diseases. Aged persons cannot work as a young person. Therefore, the claim of the petitioner that he is not able to work because of his age and illness cannot be doubted. He is not able to work and needs sufficient money to maintain himself. Therefore, this Court is of the considered view that the respondents, as the children of the petitioner, are liable to pay maintenance to the petitioner.

13. Then coming to quantum, the first respondent is earning Rs.24,000/- per month, after deductions from her salary of Rs.36,000/-, the second respondent claims to be pursuing Ph.D. There is no material produced to show his monthly earning. He is an able bodied person with very high educational qualification. Considering the entire facts and circumstances of the case and the evidence produced, this Court is of the considered view that the respondents are directed to pay a sum of Rs.2,500/- (Rupees Two Thousand Five Hundred only) each per

month to the petitioner as maintenance. This maintenance amount has to be paid from the date of filing of the Maintenance Petition. In this view of the matter, the order of learned Family Court Judge, Dharmapuri, in M.C.No.5 of 2016 is set aside and the Criminal Revision Case is allowed.

14.In fine, the order of learned Family Court Judge, Dharmapuri, in M.C.No.5 of 2016 is set aside and the Criminal Revision Case is allowed. The respondents are directed to pay a sum of Rs.2,500/- (Rupees Two Thousand Five Hundred only) each per month to the petitioner as maintenance from the date of the Maintenance Petition. No costs.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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To

1. The Judge,
Family Court, Dharmapuri.

2.The Public Prosecutor,
High Court, Madras.

3.The Deputy Registrar,
Criminal Section,
High Court, Madras.

Order
in

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CRL.R.C.No.403 of 2017

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