

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.1132 of 2019
and
CrI.M.P.No.15222 of 2019

Dr.T.Subash

... Petitioner

Vs.

Amsa

... Respondent

PRAYER: This Criminal Revision Case is filed under Section 397 read with Section 401 of Cr.P.C., to set aside the order made in M.C.No.55 of 2017 on the file of the Family Court at Dharmapuri, dated 26.09.2019 thereby dismissing said case in M.C.No.55 of 2017.

For Petitioner :Mr.Ayyadurai
(Senior Counsel) For M/s.V.B.Perumal Raj

For Respondent :Mr.M.Selvam

ORDER

This criminal revision case has been filed to set aside the order made in M.C.No.55 of 2017 on the file of the Family Court at Dharmapuri, dated 26.09.2019 thereby dismissing said case in M.C.No.55 of 2017.

2. The petitioner is the husband and the respondent is the wife. The respondent/wife filed a maintenance case in M.C.No.55 of 2017 under Section 125 of the Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.,' for short) on the file of the Family Court at Dharmapuri against the petitioner/husband for maintenance. The learned Judge, Family Court at Dharmapuri, after enquiry ordered a sum of Rs.21,500/- per month to the respondent herein. Challenging the said order passed by the learned Judge, Family Court at Dharmapuri, the petitioner/husband has filed the present revision before this Court.

3. The case of the respondent/wife is that the marriage between the petitioner and the respondent was solemnized on 06.06.1999 as per the Hindu rites and customs at Murugan Temple,

Vayaloor, Trichy. Out of their wedlock, they had no issue. The petitioner herein demanded dowry, property, medical higher education, money to build a Clinic and subjected her to cruelty and the respondent is living separately without any support, as her parents passed away and living in a rental house with much difficulty and could not maintain herself. The petitioner herein without getting divorce from the respondent, has got married again, begotten children, constructed a new house, working as ENT Doctor in Dharmapuri Government Hospital and also running a Private Clinic. The respondent living separately for the past 15 years. The petitioner is having properties worth about Rs.2 crores and working as a Government Doctor and earns more than Rs.70,000/- per month, as salary, in addition to that rental income and he has got sufficient means. The respondent requires a sum of Rs.30,000/- per month for maintenance and therefore, she filed maintenance case in M.C.No.55 of 2017 before the Family Court, Dharmapuri.

4. The case of the petitioner/husband is that the marriage and reception expenses were borne out only by the petitioner's parents. After marriage, petitioner pursued his course as House Surgeon at Mysore JSS Medical College and took training at Royapettah Hospital, Chennai and took up higher studies at Ramachandra Medical Collge. The marriage was not at all consummated. The educational expenses of the petitioner was borne out by the petitioner's father only. There was no necessity to open a Clinic at that time and petitioner had sufficient property to begin a Clinic. In order to maintain and save their family dignity, compromise was arrived in the petition for divorce filed by the respondent in H.M.O.P.No.53 of 2002 and maintenance case in M.C.No.48 of 2003. As per the compromise, 2 storeyed concrete house at Harichandran Koil Street and Bharathipuram, 66 feet street consisting of shops and Rs.3 lakhs of cash was given to the respondent, as permanent alimony. Therefore, maintenance case was filed by the respondent in M.C.No.48 of 2003 and it was dismissed on 05.12.2003. The respondent is residing at her sister's house and not in a rented house separately. The maintenance case filed by the respondent is not maintainable, as the respondent has got permanent alimony by way of properties and cash.

5. The learned Judge, Family Court at Dharmapuri failed to consider the factual as well as legal position, ordered a sum of Rs.21,500/- per month for maintenance which warrant interference of this Court.

6. Learned counsel for the petitioner would submit that marriage was consummated and there is no issue. The respondent filed a divorce petition and also maintenance case in which the parties arrived at settlement and two properties were given to

the respondent/wife and also Rs.3 lakhs given to her as permanent alimony. Therefore, as per law, once the wife obtained a permanent alimony, she is not entitled to get any maintenance under Section 125 of Cr.P.C., and the respondent/wife also admitted the same. The learned Judge, Family Court at Dharmapuri, failed to appreciate the oral and documentary evidence and wrongly ordered for a sum of Rs.21,500/- per month for maintenance. After divorce, the petitioner married another girl and that he got children and therefore, he has to maintain his family and there is no need to pay any maintenance amount to the respondent herein. Therefore, the order passed by the learned Judge, Family Court at Dharmapuri, is liable to be set aside.

7. Learned counsel for the respondent would submit that the respondent filed a petition for divorce in H.M.O.P.No.53 of 2002 and also filed a maintenance case in M.C.No.48 of 2003 and his father was alive and though they agreed to give his property but physically they have not handed over the property and one of the properties were sold by the father of the petitioner himself and petitioner herein has also admitted during the evidence that other house is also old one and in dilapidated condition and for the purpose of safety, he is residing with her sister. Further, as per the customs, the respondent cannot get re-married. However, the petitioner got re-married and he begot children and living joyful life and he himself also admitted that he got properties and also working as a Doctor in Government Hospital as well as running a Private Clinic and getting a sum of more than Rs.75,000/- as monthly salary and he has got sufficient means and that he also constructed building and getting rental income from the said building and shops and therefore, he has got sufficient means. Whereas, the respondent/wife is concerned, she has no means to maintain herself. Only at the time of evidence, in the HMOP they entered into a compromise subsequently, the property was sold by the father of the petitioner and the respondent is not enjoying any property. Further, in the year 2003, he received a sum of Rs.3 lakhs which is not sufficient to maintain herself and considering prevailing cost of living as on date. The wife is entitled to get maintenance to maintain the status par with her husband and considering the economical status of the petitioner, the learned Judge, Family Court at Dharmapuri, ordered a sum of Rs.21,500/-. There is no merits in the order passed by the learned Judge, Family Court at Dharmapuri.

8. Heard both sides and perused the materials available on record.

9. Admittedly, the marriage between the petitioner and the respondent was solemnized on 06.06.1999 and there was no issues

and the petitioner left the respondent and though respondent filed the divorce petition, they entered into a compromise and no divorce was granted. As such, the respondent continued to be as wife of the petitioner. Even otherwise, the divorced wife is also entitled to get maintenance. The case of the petitioner is that the respondent/wife obtained permanent alimony, hence, she is not entitled to get maintenance. But the records show that one of the properties allotted to the respondent, sold by the father of the petitioner herein and also other properties does not fetch any income for leading day-to-day life. However, the petitioner is a Doctor by profession and also working in Government Hospital and getting a salary for more than Rs.1 lakh in addition to that earns through private practice and also having movable and immovable properties and also getting rental income.

10. Even though the respondent admitted that she received only Rs.3 lakhs by way of cash in the year 2003, as on date, the petitioner is not able to substantiate that the respondent has got sufficient means to maintain herself. Therefore, as per Section 125 of Cr.P.C., when the wife unable to maintain herself and husband has got sufficient means, wife is entitled to get maintenance.

11. Though in this case, earlier petition filed for divorce and also maintenance case in M.C.No.48 of 2003, the parties entered into a compromise. However, the evidence shows that the petitioner has to maintain the wife, if needed. Hence, in this case as stated earlier, the respondent/wife has no sufficient means to maintain herself and the petitioner/husband is having sufficient means. Considering the earlier compromise entered into between the parties and respondent also received Rs.3 lakhs cash for maintenance, considering the cost of living prevailing as on date, she is entitled to get maintenance. Therefore, the petitioner is liable to pay Rs.15,000/- per month and therefore the order passed by the learned Judge, Family Court at Dharmapuri, is modified from Rs.21,500/- per month to Rs.15,000/- per month.

12. With the above modification, the criminal revision case is dismissed. Consequently, the connected criminal miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

dm

To

The Family Court at Dharmapuri.

+1cc to Mr. M.Selvam, Advocate, S.R.No. 26574

+2cc to Mr.V.B.Perumal Raj, Advocate, S.R.No. 26494 & 26491

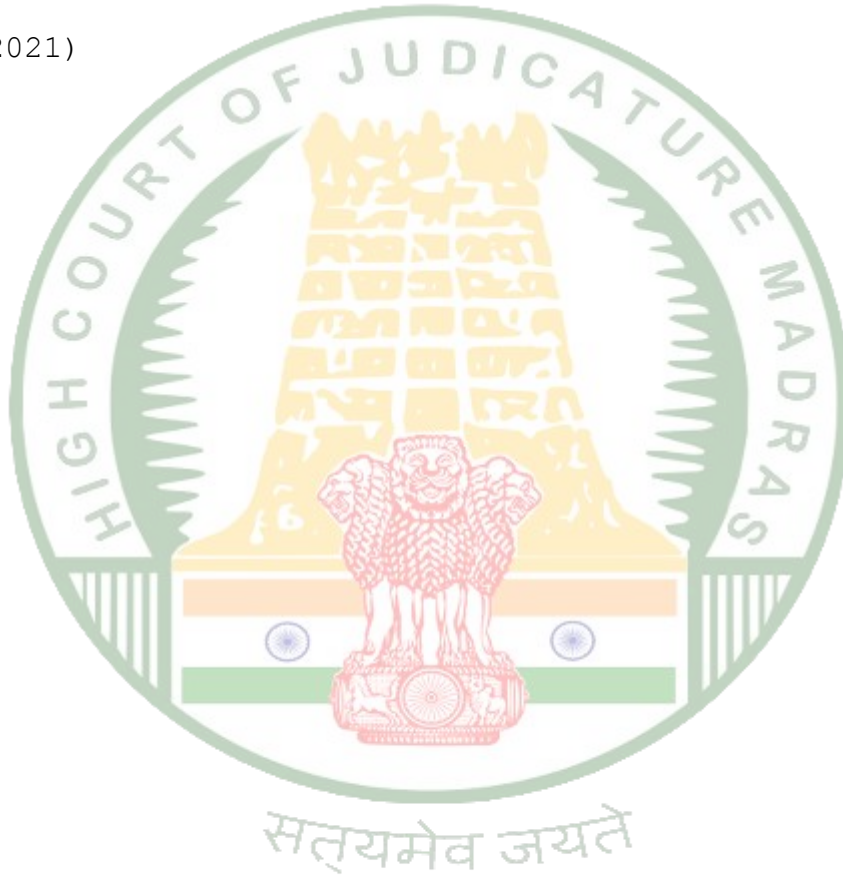
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GP (CO)

GN(29/06/2021)



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