



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 28.06.2021

ORDER PRONOUNCED : 30.07.2021

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**
Crl.R.C. (MD) No.340 of 2017

Alamelu

... Petitioner

vs.

G.Rajesh Kumar

... Respondent

PRAYER:- This Criminal Revision Case filed under Section 397(1) r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the M.C.No.133 of 2014 on the file of the Family Court, Tiruchirappalli and to set aside the order dated 01.11.2016 and direct the respondent to pay a sum of Rs.15,000/- per month as maintenance to the petitioner.

For Petitioner : Mr.T.Lajapathi Roy
For Respondent : Mr.Sarvagan Prabhu for
Mr.T.J.Ebenezer Charles

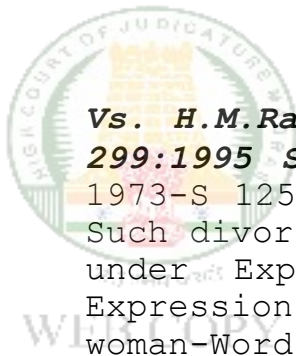
ORDER

This Criminal Revision Case is filed by the wife/petitioner against against the dismissal of the maintenance case in M.C.No. 133 of 2014 on the file of the Family Court, Tiruchirappalli as the petitioner is not entitled to maintenance as she has refused to cohabit with her husband/respondent.

2.The point for consideration is whether the order of the learned Judge, Family Court, Tiruchirappalli in M.C.No. 133 of 2014 is to be set aside.

3.The learned counsel for the petitioner submitted that the trial Judge, the learned Judge, Family Court, Tiruchirappalli had misdirected herself and committed an error in dismissing the claim for maintenance. When the Hon'ble Supreme Court had held that even a wife, who got divorced, is entitled to the maintenance, the dismissal of the claim on the ground that the petitioner/wife had refused to cohabit with the respondent/husband cannot be a ground to reject the claim of maintenance.

4.Further, the learned counsel for the petitioner relied on the rulings of the Hon'ble Supreme Court in the case of **Vanamala (Smt)**
<https://hcservices.ecourts.gov.in/hcservices/>



Vs. H.M.Ranganatha Bhatta reported in (1995) **5 Supreme Court Cases 299:1995 Supreme Court Cases (Cri) 899**. "Criminal Procedure Code, 1973-S 125(1) Expln. and 125(4)-Divorce obtained by mutual consent-Such divorced wife who has not remarried and entitled to maintenance under Explanation cannot be debarred by invoking S.125(4) - Expression 'Wife' in sub-section(4) does not include a divorced woman-Words and Phrases."

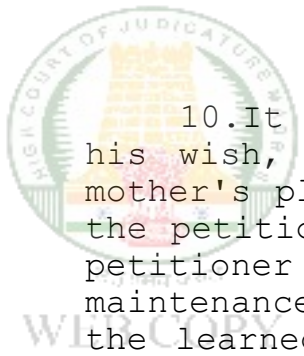
5.The learned counsel for the respondent invited the attention of this Court to some of the paragraphs of the learned Trial Judge and had observed that the attitude of the revision petitioner during enquiry under Section 165 of Criminal Procedure Code and based on the appreciation of evidence, the learned Trial Judge dismissed the claim petition for maintenance. Against which, this Criminal Revision Case has been filed.

6.It is the further contention of the learned counsel for the respondent that the husband addressed letter to the wife to rejoin the family but she refused and she had withdrawn the company from the husband. Hence, the husband need not pay compensation. Therefore, based on the appreciation of evidence, the learned Trial Judge had dismissed the claim petition. The reasoning given by the learned Trial Judge dismissing the claim petition does not warrant any interference of this Court and the Criminal Revision Petition is to be dismissed as not maintainable.

7.The learned counsel for the revision petitioner by way of reply to the arguments of the learned counsel for the respondent invited the attention of this Court to page No.31 of the judgment of the learned Trial Judge, where the deposition of respondent/husband has been drawn. The learned counsel for the revision petitioner submitted that interference is warranted against the conduct and attitude of the respondent. Therefore, the revision petition has to be allowed.

8.The learned counsel for the respondent submitted that the suit filed by the minor son against the respondent before the learned Sub Judge is still pending for maintenance. In these circumstances, this revision petition is to be dismissed.

9.On perusal of the arguments of the learned counsel for the petitioner/wife and the learned counsel for the respondent/husband and the order passed by the learned Judge, Family Court, Tiruchirappalli, it is found that in the course of summary enquiry, it was admitted in the cross-examination that a Plot was purchased at Trichy by the petitioner. The petitioner/wife claimed that she purchased the Plot from the amount that was given by her father and the contention of the same was rejected by the learned Judge stating that the petitioner's father is a pensioner and he cannot afford the same. The petitioner denied that she had been employed at Trichy.



10.It is the contention of the respondent/husband that against his wish, the petitioner had been living with her mother in her mother's place. The repeated attempt by the respondent to join with the petitioner turned futile. This point and also the fact that the petitioner had instructed her minor son to institute a suit for maintenance against the respondent/husband, which is pending before the learned Special Judge, Trichy, had also been discussed by the learned Judge, Family Court, Tiruchirappalli in her judgment dated 01.11.2016 from paragraph Nos.21 to 37. That is the reason for the learned Judge, Family Court, Tiruchirappalli, to dismiss the claim petition.

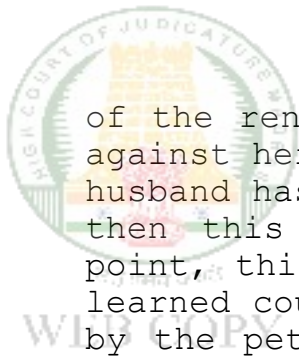
11.On the one hand, the respondent had stated that he had been paying the amount of Rs.5,000/- regularly to the petitioner and on the other hand, he had stated that the petitioner got employment and because of that, she had refused to come and join with him. The respondent is eagerly waiting to take the petitioner back with the child, but she refused to the same. He has stated that she purchased the property a Plot at Trichy, for which, he was paying.

12.The learned Judge accepted the contention of the respondent/husband that the petitioner had sufficient means. When the petitioner is unable to prove her job and income, then it is to be presumed that the property was purchased by her from the funds of the respondent/husband, but still the petitioner had filed a suit for maintenance against her husband through her minor son. Therefore, without any reasonable cause, the petitioner having refused to cohabit, having purchased the property at Trichy and getting the rental income, the claim for maintenance was refused by the learned Judge.

13.Based on the documents furnished by the respondent/husband and the documents furnished by the petitioner and the admissions made by the petitioner in the cross-examination, the learned Judge, Family Court, Tiruchirappalli on proper appreciation of the evidence had arrived at a conclusion that the petitioner is not entitled to maintenance. Therefore, the learned Judge had rightly dismissed the claim petition.

14.The judgment relied on by the learned counsel for the petitioner ie., ***Vanamala (Smt) Vs. H.M.Ranganatha Bhatta*** reported in (1995) ***5 Supreme Court Cases 299:1995 Supreme Court Cases (Cri) 899***, will not help the petitioner's case, because that was a ruling regarding even a divorced wife is entitled to maintenance.

15.Admittedly, the woman, who had been divorced by the husband, is helpless for her day-to-day expenses and the right to her livelihood has to be protected. If the woman is not remarried, she can claim maintenance from her husband for her maintenance. Here, the petitioner/wife had purchased the property and is in enjoyment



of the rental income from the same. Also she had instituted a suit against her husband through her minor son for maintenance. When the husband has to pay maintenance or has to face the trial of the suit, then this petition for maintenance is not maintainable. In that point, this case is distinguished from the ruling relied on by the learned counsel for the petitioner. Therefore, the contention raised by the petitioner in this Revision Case cannot be accepted in the light of the well reasoned order passed by the learned Judge, Family Court, Tiruchirappalli. Therefore, the point for consideration is answered in favour of the respondent/husband and against the petitioner/wife.

16.In the result, this Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

The Judge,
Family Court,
Tiruchirappalli

Copy to

The Section Officer, (2C)
Criminal Records,
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-24862[F] dated 02/08/2021)

Crl.R.C.(MD) No.340 of 2017
30.07.2021

ES(CO)
KB(13.08.2021) 4P 5C