



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.03.2021

Pronounced on : 01.04.2021

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

***CRL.RC(MD).No. 828 of 2017 and
Cr1.M.P. (MD).No.10243 of 2017***

1. Suseela
2. Prapavathi : Petitioners

Vs.

1.A. Ammasi

2.The Mangaing Director,
Tamil Nadu State Transport Corporation Ltd.,
Registered Corporate Office
TNSTC (Kumbakonam) Ltd.,
New Railway Station Roaad,
Kumbakonam, Thanjavur District.

3.The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
TNSTC (Kumbakonam) Ltd.,
Trichy Region, Periyamilagu Parai (Opp to Collector Office)
Condonment, Trichy.
(R2 and R3 impleaded as per order of this Court
dated. 20.11.2019 in Cr1.M.P.No. 6267 of 2019 in
Cr1.R.C(MD).No. 828 of 2017 : Respondents

PRAYER:- Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the order passed by the Additional District and Sessions Judge Cum Fast Track Court No.II, Trichy in Cr1.Rev.No.50 of 2010, dated 13.06.2011 reverting the maintenance order passed by the learned District Munsif Cum Judicial Magistrate, Lalgudi in M.C.No. 15 of 2004, dated 15.02.2010.

For petitioner : Mr. M.R. Sreenivasan

For R1 : Mrs. J. Maria Roseline

For R2 and R3 : Mr. P. Balasubramanian

**ORDER**

This Criminal Revision case is directed against the order passed in Crl.Rev.No.50 of 2010, dated 13.06.2011 on the file of the Additional District and Sessions Court (Fast Track Court No.II), Thiruchirappalli reversing the order passed in M.C.No.15 of 2004, dated 15.02.2010 on the file of the District Munsif - cum - Judicial Magistrate, Lalgudi.

2. For the sake of convenience and brevity, the parties hereinafter will be referred as per their ranking / status before the trial Court.

3. The learned counsel appearing for the revision petitioners would contend that the learned Sessions Judge has directed the respondent to pay monthly maintenance to the second petitioner till her marriage, but the second petitioner after her marriage was deserted by her husband, that the second petitioner is a heart patient and she is not in a position to maintain herself and that therefore, the second petitioner along with her mother has approached this Court with the present revision. Subsequently, the learned counsel for the petitioners would submit that the second petitioner got appointment in the Government service and is getting decent income and that therefore, he is restricting the relief with respect to the first petitioner.

4. It is not in dispute that that the marriage between the first petitioner and the respondent was solemnized on 09.12.1987 at the respondent's house in Devimangalam and that due to their wedlock the second petitioner was born to them on 13.09.1994. It is also not in dispute that subsequently, there arose disputes and misunderstanding between them and that they are living separately.

5. The first petitioner, for her and for her minor daughter, has filed the case in M.C.No.15 of 2014 under Section 125 Cr.P.C., claiming monthly maintenance at Rs.2,000/- each. The respondent has filed a counter statement disputing the liability and prayed for dismissal. The learned Judicial Magistrate, upon considering the evidence and on hearing the arguments of both sides, has passed an order on 15.02.2010, directing the respondent to pay monthly maintenance at Rs.500/- each from the date of petition and monthly maintenance at Rs.2,000/- each from the date of order. Aggrieved by the said order, the husband has filed the revision in Crl.Rev.No.50 of 2010 and the learned Additional District and Sessions Judge, upon considering the evidence and on hearing both the sides, has passed the impugned Judgment on 13.06.2011 setting aside the maintenance order granted in favour of the first petitioner and modifying the order with respect to



second petitioner, directing the respondent to pay monthly maintenance at Rs.500/- from the date of petition till the date of order of the trial Court and thereafter, at Rs.1,000/- per month till her marriage. Not satisfied with the Judgment of the revisional Court, the petitioners have come forward with the present revision.

6. Whether the impugned order dated 13.06.2011 made in Cr.Rev.No. 50 of 2010 on the file of the Additional District and Sessions Court, FTC- II, Thiruchirappalli, reversing the Judgment passed in M.C.No. 15 of 2004, dated 15.02.2010 on the file of the District Munsif Cum Judicial Magistrate, Lalgudi is liable to be set aside? is the point for consideration.

7. The first petitioner / wife and the respondent / husband, as usual in matrimonial proceedings, have hurled allegations and counter allegations each other and went to the extent of alleging that the other party is living in adultery. Though the respondent has alleged that the first petitioner had illicit affairs with one Rajendiran, he has not produced any evidence to substantiate the same. The first petitioner has alleged that the respondent had extra martial affairs with his brother's wife and that subsequently he had married one Rajalakshmi, while the first marriage with the first petitioner was subsisting. Though the respondent has denied and disputed the allegation of his illicit affairs with his brother's wife, he has specifically admitted, even in the cross examination, that he had married Rajalakshmi 17 years back and he had two children through her. The respondent in his additional counter statement has specifically admitted that he married the first petitioner and that the second petitioner Prabavathi was his daughter. But during cross examination, the respondent would say that he had not married the first petitioner and that he would deny the suggestion that the first petitioner is his wife and the second petitioner is his daughter. But the trial Court as well as the Appellate Court, upon considering the evidence available, have rightly decided that the first petitioner is the wife and the second petitioner is the daughter of the respondent.

8. Since the respondent had married another lady Rajalakshmi and is living with her, it goes without saying that he had refused to live with the first petitioner and thereby, neglected them. As rightly contended by the learned counsel for the revision petitioners, the respondent has not shown that since the first petitioner had deserted him and refused to live with him, he was constrained to contract the second marriage.

9. No doubt, the first petitioner in his evidence would admit that since she was neglected by the respondent, she had gone



to Kuwait along with neighbour cum relative and after working for two years, she had returned. She would also say that she had managed to open a petty shop at Vellalur by getting loan and that creditors had taken away the shop. She would also say that she was selling chicken for some time and she used to sell 10 Kgs on Sundays. She would admit in her cross examination that she was coming to the Court for deposing directly from Thiruppur and that she is working as a servant maid in a house at First Street, Valayalkara Nagar in Neethiammal Nagar. The learned Sessions Judge, relying the above evidence of the first petitioner and also considering the fact that the first petitioner had suppressed the truth by giving her Lalgudi address in the petition while she was residing and working at Thiruppur and that she has not chosen to examine any other witnesses to prove that she was struggling for food, dress and other expenses, has come to the decision that the first petitioner is not entitled to get the maintenance from the respondent. This Court is constrained to say that neither Section 125 Cr.P.C., nor any other law prescribed that wife and the children under her care and custody are entitled to approach the Court for getting maintenance from the husband or the father, only, if they are starving and unable to get a single meal

10. In the present case, the first petitioner has given evidence that she went to Kuwait and after working for 2 years, she had returned. It is not the specific case of the respondent that the first petitioner is educationally qualified and is in position to get good job with good income. It is also not the specific case of the respondent that the first petitioner was in good job with decent income. As already pointed out, the first petitioner has given evidence categorically that she was working as house maid in a house at Thiruppur.

11. The learned counsel appearing for the revision petitioners has relied on decision of the Hon'ble Supreme Court reported in **Sunita Kachwaha and others Vs. V. Anil Kachwaha, AIR 2015 SC 554** wherein the Hon'ble Apex Court has held that merely because the wife was earning something, it would not be a ground to reject her claim for maintenance. It is necessary to refer the decision of the Hon'ble Supreme Court in **Chaturbhuj Vs. Sita Bai**, reported in **AIR 2008 SC 530** relied on by the learned counsel for the revision petitioners and whereunder the Hon'ble Apex Court has held that Section 125 Cr.P.C., is a measure of social justice and is enacted to protect women and children.

"5. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain



herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal Vs. Mrs. Veena Kaushal and Ors (AIR 1978 SC 1807) falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950 (in short the 'Constitution'). It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiyar Vs. State of Gujarat and Ors (2005 (2) Supreme 503).

6. Under the law the burden is placed in the first place upon the wife to show that the means of her husband are sufficient. In the instant case there is no dispute that the appellant has the requisite means.

7. But there is an inseparable condition which has also to be satisfied that the wife was unable to maintain herself. These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife. It has to be established that the wife was unable to maintain herself. The appellant has placed material to show that the respondent-wife was earning some income. That is not sufficient to rule out application of Section 125 Cr.P.C. It has to be established that with the amount she earned the respondent-wife was able to maintain herself.

8. In an illustrative case where wife was surviving by begging, would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 Cr.P.C. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In Bhagwan v. Kamla Devi (AIR 1975 SC 83) it was observed that the wife should be in a position to maintain standard of living which is neither luxuriose nor penurious but what is consistent with



status of a family. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 Cr.P.C."

12. In the case on hand, it is not the case of the respondent that the first petitioner has been doing office work and is getting good income. It is also not his case that the first petitioner is owning immovable properties. As rightly contended by the learned counsel for the revision petitioners, when the first petitioner has been doing some sort of work including the work of house maid, so as to enable her to get a single meal, it cannot be said that she is able to maintain herself.

13. Considering the above, this Court has no hesitation to hold that the finding of the learned Sessions Judge in reversing the decision of the learned Magistrate granting maintenance to the first petitioner is not proper and is not in accordance with law and as such, the same is liable to be set aside.

14. Admittedly, the respondent was working as a Senior Driver in Tamil Nadu State Transport Corporation. The respondent in his evidence would admit that he is residing in his own building. The learned Sessions Judge has observed that the respondent was getting monthly salary of Rs.11,413.54/- as per Ex.P4 and admittedly, the said pay slip is for the month of November 2008. The learned counsel for the revision petitioners would contend that the respondent is now getting more than Rs.35,000/- as salary.

15. Considering the above facts and circumstances of the case, status of the parties and also the present economic scenario, the fixation of the monthly maintenance at Rs.2,000/- by the trial Court cannot be found fault with and the amount awarded is very much reasonable and cannot said to be excessive. Hence, this Court concludes that the order of the trial Court with respect to first petitioner is to be restored. Even according to the revision petitioners, the respondents 2 and 3 are formal parties and no relief is claimed against them. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

16. In the result, the Criminal Revision Case is partly allowed and the impugned order of the learned Additional District and Sessions Judge, Fast Track Court-II, Thiruchirappalli in Crl.Rev.No.50 of 2010, dated 13.06.2011 is set aside with respect



to the first petitioner and the order of the trial Court is restored. The Criminal Revision with respect to the second petitioner and as against the respondents 2 and 3 is dismissed. Parties are directed to bear their own costs. Consequently, the connected Miscellaneous Petition is closed.

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Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar (CS)

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To

1.The Additional District and Sessions Judge
Cum Fast Track Court No.II, Trichy

2.The learned District Munsif
Cum Judicial Magistrate, Lalgudi.

Copy to

The Section Officer, (2 copies)
Criminal Section
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.R.SREENIVASAN, Advocate (SR-15190[F] dated
01/04/2021)

order made in
CRL.RC(MD) .No. 828 of 2017 and
Cr1.M.P. (MD) .No.10243 of 2017
01.04.2021

VB (04/05/2021) 7P / 6C