

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 22.06.2022

Orders Pronounced on : 29.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.244 of 2020

A.Rasheed Mohideen

.. Petitioner

Versus

Rahima Begum

.. Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to call for the records in M.C.No.448 of 2011 on the file of the learned V Additional Family Court, Chennai and set aside the order, dated 19.08.2019.

For Petitioner : Mr.S.N.A.Hussainy

For Respondent : Mr.D.J.Adinarayanan

ORDER

This Revision Case is filed by the petitioner/husband, aggrieved by the order of the V Additional Family Court, Chennai, dated 19.08.2019 in M.C.No.448 of 2011, whereby, a sum of Rs.7,000/- per month is ordered as maintenance from the date of petition i.e., 10.10.2011.

2. The learned Counsel appearing on behalf of the petitioner/husband would submit that he had disputed the marriage itself. Though they started living together, there is no proof for the marriage. It is in this context, the petitioner and the respondent went before the local Shariath peace committee and by a Memorandum of Understanding, dated 15.01.2010, the relationship between the petitioner and the respondent was also amicably resolved and the respondent/wife obtained a sum of Rs.1,20,000/- as compensation and after receiving the said amount in the year 2010, thereafter, filed the petition in the year 2011. Therefore, he would submit that

there is no proved relationship of husband and wife between the petitioner and therefore, there was no liability for the petitioner to pay the amount.

3. Secondly, he would submit that the Trial Court, even though, has considered the payment of sum of Rs.1,20,000/-, did not take into account the same while fixing the quantum of maintenance. He would further submit that the petitioner/husband was 56 years even at the time of the respondent/wife filing the petition and now, he is 67 years of age and is bedridden and has got no source of income. The said factor was not at all taken into account by the Trial Court. He would, therefore, submit that the sum of Rs.7,000/-, as ordered by the Trial Court, is on the higher side and beyond the capability of the petitioner. He would further submit that he had only taken care of the children's marriage etc., and the other expenses and the respondent/wife was working as a maid in the gulf and therefore, is capable of maintenance herself.

4. Per contra, the learned Counsel appearing for the respondent/wife would submit that in this case, even though Memorandum of Understanding was entered into before the Shariath committee, the same would not amount to a valid divorce and therefore, the respondent is the wife of the petitioner. After coming back from the gulf, she had returned the said sum of Rs.1,20,000/- which was given to her. Thereafter, she had no other source of income and therefore, is liable to be maintained by the petitioner/husband. He would submit that the petitioner/husband has Tyre business in the name of R.K. Tyres and was earning a sum of Rs.80,000/- per month and therefore, he would submit that only a barest minimum of Rs.7,000/- is ordered as maintenance by the Trial Court and therefore, would pray that the petition may be dismissed.

5. I have considered the rival submissions made on behalf of the either side and perused the material records of the case. In this case, the parties have, in detail, filed their pleadings and the counter affidavit and detailed cross-examination has been done on either side. A careful perusal of the complete evidence on record, it is clear that the respondent/wife was married to the petitioner as the second wife, which is permitted under the Muslim personal law. There was an attempt to dissolve the marital relationship before the Shariath committee, but, however, the said Memorandum of Understanding does not clearly and categorically record any divorce being granted, but, only makes a statement that hereafter, there will not be any relationship between the parties. Even if any divorce is claimed, the same cannot be recognised by this Court as the marriage has to be dissolved in the manner known to law by filing appropriate divorce petition before the Family Court.

Therefore, I hold that the relationship, between the parties, as husband and wife stands proved.

6. As far as the reason for living separately is concerned, it is the claim of the wife that she was driven away by the petitioner/husband on account of the marital discord between them. But, it is the contention of the husband that the wife suspected that the husband aided his daughter in eloping and therefore, started living separately. But, however, the said aspect has not been categorically proved by the husband by examining any independent witness in this regard and therefore, I hold that the wife is not living together only on account of the memorandum entered into before the Shariath committee, whereby, the husband has decided to end the relationship. Therefore, the petitioner/husband has not proven in this case that that wife is living separately without any justifiable reason. Therefore, I hold that the respondent/wife is entitled for maintenance.

7. Now, coming to the quantum, the Hon'ble Supreme Court of India, in Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy¹, has held that it would be appropriate to grant about 25% of the income of the husband as maintenance. Even though the wife has claimed that the husband has been earning more than Rs.80,000/-, except making statement that there is a business in the name of R.K Tyres, no further proof such high earning has been placed on record. But, however, on the part of the husband, he has not specifically denied about the business. Therefore, considering the entire pleadings of the parties, their status etc., it is not unjustifiable to order a minimum amount. Accordingly, while the Trial Court has ordered Rs.7,000/-, the learned Counsel for the petitioner submits that while it has considered the payment of Rs.1,20,000/-, the same was not taken into account while fixing the quantum. When considering the said submission, along with the age of the parties, and the submission that the petitioner is also in an advanced age, I am of the view that it would be appropriate that the maintenance, fixed by the Trial Court, as Rs.7,000/- per month be reduced as Rs.6,000/- per month. Accordingly, I hold that the respondent/wife will be entitled for maintenance for a sum of Rs.6,000/- per month from the date of petition i.e., from 10.10.2011.

8. Therefore, this Criminal Revision Case is partly allowed on the following terms:-

(i) The order of the V Additional Family Court, Chennai, dated 19.08.2019 in M.C.No.448 of 2011 is upheld with the modification of the quantum of maintenance as Rs.6,000/- per month;

(ii) Consequently, Cr1.M.P.No.1767 of 2020 and 13693 of 2021 are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

grs

To

The V Additional Family Court,
Chennai.

+1cc to Mr.D.J.Adinarayanan, Advocate, S.R.No.40532

+1cc to Mr.S.N.A.Hussainy, Advocate, S.R.No.40819

Cr1.R.C.No.244 of 2020

RR(CO)
UMA(12/07/2022)