



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On
28.04.2022

Orders Pronounced On
27.05.2022

CrI.R.C.No.661 of 2012
and M.P.No.1 of 2012

N.Yadavaraj

... Petitioner/Respondent

Vs.

S.Abirami (a) Arulmozhi

... Respondent/Petitioner

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order passed in M.C.No.107 of 2009 dated 16.03.2012 on the file of the Family Court, Coimbatore.

For Petitioner : Mr.A.R.Nixon
For Respondent : Mr.L.Mouli

ORDER

The petitioner/husband is the respondent in M.C.No.107 of 2009 filed by the respondent/wife seeking maintenance, wherein the learned Judge, Family Court, Coimbatore by order dated 16.03.2012 directed the petitioner/husband to pay Rs.3,500/- per month as maintenance to the respondent/wife under Section 125 Cr.P.C, against which, the present revision petition is filed.

2.The gist of the case is that the petitioner and the respondent got married on 01.12.2006 at S.N. Marriage Hall, Coimbatore and the marriage was an arranged one. During the marriage, customary sridhana articles were presented. After the marriage, the respondent was living with the petitioner along with his parents at Chennai. Within one month of marriage, the respondent was ill-treated, when the same was questioned, she was informed that she was not beautiful and brought bad luck. Thereafter, she was constantly harassed. The parents of the petitioner also treated her badly and they were planning to arrange another marriage to the petitioner/husband. When the respondent/wife become pregnant, immediately she was taken to the hospital and conducted abortion. Since the respondent was born with five sisters, she being the eldest and she does not



want to be a burden to her parents, she stayed in her matrimonial home with all the humiliations. On 11.07.2006, the petitioner brought the respondent to Coimbatore, left her in the Railway station and went back informing that after six months he will come and take her back. Thereafter, the petitioner failed to take her back to Chennai, when the respondent's parents questioned the same, they were abused, insulted and threatened. A police complaint was lodged by the respondent's parents, at that time, they were informed that already the petitioner obtained an exparte divorce. Thereafter, the respondent was under the care and support of her parents. The petitioner, being a Cameraman employed in Film industry and a free lancer doing lot of work to the private channels, advertising agency and earning around Rs.50,000/- per month. Hence, the respondent filed a petition seeking a sum of Rs.10,000/- per month as maintenance. In the Trial Court, the respondent examined herself as P.W.1, her sister as P.W.2 and marked Ex.P1 to Ex.P5. On the side of the petitioner, he examined himself as R.W.1 and marked Ex.B1 to Ex.B5. On conclusion of the trial, the Trial Court directed the petitioner/husband to pay a sum of Rs.3,500/- per month as maintenance to the respondent/wife.

3.The contention of the petitioner is that the marriage took place on 01.12.2006 and they lived together for only one month. Thereafter, the respondent/wife left the matrimonial home leaving behind a hand written letter informing that she hails from Coimbatore, she was brought up in a different circumstances, the new environment at Chennai was not conducive, she was not comfortable with the petitioner and his family members due to incompatibility and the new circumstances. She was leaving the matrimonial home on her own to join and live with her parents in Coimbatore. Writing such a letter in her own handwriting, voluntarily deserted the matrimonial home cannot claim any maintenance. It is further submitted that the petitioner as a free lancer was not having any permanent regular income, he was doing whatever work he could get, his income was meagre and he himself is depend on his aged parents support and his father's pension. Both his parents are sick, major portion of his father's pension and rental income are used for their medical expenses. Further, the petitioner borrowed money from his friends, relatives and known persons, even for his credit card dues, he is unable to make payment, which has become mounting and he is facing compulsion to pay back all his dues and debts. It is further submitted that the respondent on her volition left the matrimonial home, the marriage between the petitioner and the respondent no more exists, already, divorce was granted by the Family Court. Further, P.W.2, sister of the



respondent/wife admits that the respondent is employed in a private firm, makes an earning and she is not dependent. It is further submitted that when the respondent deserted the matrimonial home on her own, already divorce obtained and further on the admission of his sister, she is employed and earning money, the petitioner cannot be forced to pay maintenance. Further the petitioner produced a letter which is marked as Ex.B1 to prove that the respondent/wife voluntarily deserted the matrimonial home. It is further submitted that in the matrimonial declaration, to boost the image of the petitioner, his sister shown the income of the petitioner as Rs.2,40,000 per annum which is not correct and referring the same as the income of the petitioner is not proper. Hence, he prayed for setting aside the order passed by the Trial Court directing the petitioner to pay maintenance to the respondent.

4.The learned counsel for the respondent filed a counter affidavit and a typed set of papers denying the submissions of the petitioner. The respondent submitted that the petitioner advertised in the matrimonial agency, made declaration that he is a professional cameraman, free lancer involved in photography of commercial ads, serials and in film industry, further, it is declared that his annual income as Rs.2,40,000/- per annum. On this matrimonial advertisement of the petitioner, the parents of the respondent, made enquiry with the petitioner, who confirmed the declaration and his income, thereafter both the families exchanged visits, thereafter marriage was held at Coimbatore, the entire marriage expenses were borne by the respondent's parents, after the marriage, the respondent lived in the matrimonial home with the petitioner along with his parents at Chennai. One month after the marriage, the harassment by the petitioner started, even the family members of the petitioner joined him and they were harassing the respondent, further she was humiliated, physically tortured and a letter on their dictation was forcibly obtained from the respondent, thereafter, she was sent to her parents' house. On a mere perusal of the letter, it is seen that the letter was obtained as a defensive device by the petitioner and his family members, the letter is undated and without the signature of the respondent. Further, under what circumstances the letter was written has been clearly narrated in her evidence before the Trial Court. The Trial Court accepted the same and rejected Ex.B1.

5.It is further submitted that the respondent was employed in a private firm prior to her marriage and after the marriage, she is not engaged in any employment. The respondent has only completed her Tenth Standard. Reference made to the



statement of P.W.2, her sister that the respondent was employed in a private firm cannot be a reason to deny maintenance for the respondent. The Trial Court rightly rejected the contention of the petitioner and held that the petitioner is duty bound to maintain his wife. After the order was passed by the Trial Court directing the petitioner to pay maintenance, till date the petitioner has not paid even a single penny. The petitioner not only chased away the respondent from the matrimonial home in a deceitful manner but also filed a petition for divorce in H.M.O.P.No.2706 of 2009, obtained an exparte divorce and now taking shelter behind the same and denying the respondent's entitlement of maintenance is not proper. Further, the respondent taken steps to set aside the exparte order of divorce. This Court while admitting this revision petition on 04.07.2012 directed the petitioner to deposit a sum of Rs.25,000/- a condition for granting stay but the petitioner failed to comply with the conditional order and has not made any deposit, on the other hand claiming that he had already obtained stay and hence, he cannot make any payment for maintenance.

6.It is further submitted that in the year 2019 when the revision petition was taken up for final hearing, this Court finding that there is no representation for the petitioner posted the case for dismissal on 12.04.2019 and finally, the revision petition was dismissed for default. Thereafter, the petitioner filed Crl.M.P.No.2792 of 2022 to set aside the order of dismissal. The respondent had no objection for the same for the reason that the revision petition itself can be taken up for final hearing, so that once for all quietus can be given. Further, the respondent produced a letter/Ex.B1 in the typed set of papers, which itself is a forged document. As per Ex.B1/letter, it is seen that there is no signature of the respondent. This is the true fact the Trial Court in its order in more than one place referred to the unsigned letter. The petitioner now produces a signed letter from where such letter obtained is not known which, needs further probe and appropriate action for perjury for producing the forged document to be taken. It is further submitted that the conduct of the petitioner clearly expose the true character of the petitioner. Hence, he prayed for dismissal of this revision petition.

7.Considering the submissions made and on perusal of the materials placed before this Court, it is seen that the petitioner giving advertisement in the matrimonial agency and in the declaration he projected that the petitioner is a cinematographer having annual income of Rs.2,40,000/- is not denied. The petitioner gives an explanation that the same was



given by his sister but the petitioner not taken any steps to examine his sister as witness to prove the same. Further, on perusal of Ex.B1, it is seen that it is a letter without date and signature, written in defensive to be used as and when it is required by the petitioner. This letter when confronted with the respondent, she gave an explanation under what circumstances she was forced to write such a letter and she does not confirm to the contents of the letter. The Trial Court rightly rejected Ex.B1. Likewise, the Trial Court rightly rejected the defence of the petitioner that P.W.2/sister of the respondent making stray comment that the respondent is employed, except for that what is her income, whether that income is sufficient for her to continue her same status of living, nothing has been elucidated. Further, the manner in which the exparte order of divorce obtained cast serious aspersion on the petitioner, it is now under challenge. The victim is now aged about 45 years, still unmarried and she has to sustain and maintain herself. The petitioner as the husband or divorced husband is duty bound to maintain his wife.

8.The respondent though made a claim of Rs.10,000/- per month as maintenance, the Trial Court considering the evidence in right perspective ordered Rs.3,500/- as monthly maintenance in the year 2012. The petitioner had obtained a conditional stay order at the time of admission of the revision petition. The petitioner was directed to deposit Rs.25,000/- within a stipulated time. The petitioner failed to comply with the order of this Court, for this reason alone the petition is liable to be dismissed in limine. To provide substantial and reasonable justice, the petition was considered and decided on merits. It is almost ten years from 2012, so far the petitioner failed to pay even a single penny to the respondent. Finding no reason to interfere with the order of the Trial Court, this Court dismisses the present revision petition.

9.Accordingly, the Criminal Revision Petition stands dismissed. The petitioner is directed to make the payment for maintenance forthwith. The respondent shall take appropriate coercive action in the event of failure of the petitioner to comply with the order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

cse

Sub Assistant Registrar



To

The Judge, Family Court,
Coimbatore.

Copy To

The Record Keeper,
Criminal Section, High Court,
Madras.

+1cc to Mr.A.R.Nixon, Advocate SR.No.31862

CrI.R.C.No.661 of 2012
in MP.1 of 2012

CA(CO)
GN(08/06/2022)