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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.C.NO.1239 OF 2018

1.Thoulath Nisha @ Ponnachi
2.Minor Asima Banu
3.Minor Abrin Banu

... Petitioners/Respondents

Versus

Mohammed Sirajudeen

... Respondent/ Petitioner

PRAYER :

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. to set aside the impugned order dated 11.07.2018 passed in Crl.R.P.No.6 of 2017 on the file of the Additional District and Sessions Court, (Mahila F.T.C) Tiruvarur and confirm the order passed in Crl.M.P.No.6 of 2014 on the file of District Munsif Court, Judicial Magistrate Mahila FTC, Tiruvarur.

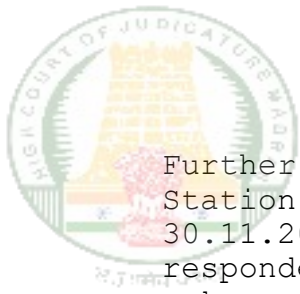
For Petitioners : Mr.I.Abdul Basith

For Respondent : Mr.K.Thenrajan

O R D E R

The petitioners filed maintenance case in MC.No.6 of 2014 against the respondent before the District Munsif Cum Judicial Magistrate, Nannilam.

2. The gist of the complaint is that on 03.04.2002 marriage between the 1st petitioner and the respondent had taken place and out of the marriage the second and third petitioners were born to them on 18.02.2003 and 14.08.2007. During Marriage Sreedhana articles and gifts were presented. After the birth of the second girl child the attitude of the respondent, her mother-in-law and sister-in-law changed and she was subjected to harassment and cruelty. Her husband was initially employed in Middle East. The 1st petitioner's mother-in-law and sister-in-law had chased her away from the matrimonial home demanding more dowry.



Further she had lodged complaint before the All Women Police Station, Nannilam on 01.10.2008 followed by another complaint on 30.11.2008. Thereafter, enquiry was conducted and the respondent his mother and sister were warned not to harass or make any dowry demand and cause cruelty to the petitioner. During December 2010 again she was chased out from the matrimonial home. Since the harassment and cruelty was continuous she was unable to continue in matrimonial home. Later a complaint was lodged on 01.10.2013 again before the Nannilam All Women Police Station and a case was registered under Section 498A IPC, Section 4 of the Tamil Nadu Prevention of Women for Harassment Act and 109 IPC. The petitioners were not taken care by the respondent and further he had contacted second marriage.

3. During trial the petitioner examined herself as PW1 and his brother as PW2 and marked Ex.P1 to Ex.P8. The respondent examined himself as DW1 and two other witnesses were examined as DW2 and DW3. No documents were marked on the side of the respondent.

4. The trial Court on appreciation of the evidence recorded and on the documents produced had given a detailed well reasoned judgment. From the evidence it is seen that the respondent owned a housing plot of 30 Kuzhi as well as an agricultural land of 1 ½ acres. To confirm the same Ex.P6 to Ex.P8 have been marked. In the chief examination the respondent admitted that even when he was in Middle East he used to send Rs.15,000/- to the petitioners. Taking all these into consideration, the trial Court had ordered Rs.5,000/- as monthly maintenance for the 1st petitioner and Rs.8,000/- each for the two minor children in total Rs.21,000/- was ordered as maintenance. Aggrieved against the same, the respondent had filed the revision before the Additional District and Sessions Court, (Mahila F.T.C) Tiruvarur.

5. The Additional District and Sessions Judge, Tiruvarur by order dated 11.07.2018 in Crl.R.P.No.6 of 2017 had modified the order of the trial Court based on the cost index. For the period from 01.04.2014 to 31.12.2015 a sum of Rs.2,5000/- to each of the petitioners was ordered to be paid. For the period from 01.01.2016 to 31.12.2017 a sum of Rs.3,000/- to each to the petitioners was ordered to be paid and for the period from 01.01.2018 to 31.12.2018 a sum of Rs.4,000 to each of the petitioners was ordered to be paid. From 01.01.2019 the respondent was ordered to pay a sum of Rs.5,000/- to each of the petitioners, for the 2nd and 3rd petitioners till they attain the age of majority or till they get married and for the 1st petitioner until further orders. With these modifications the petition was allowed against which the present revision is filed.



6. The contention of the petitioners is that the petitioners have proved that the respondent was owning the property by marking Ex.P6 to Ex.P8. Further the respondent in the proof affidavit admitted that even when he was in Middle East, he used to pay a sum of Rs.15,000/- per month to the petitioners. The 2nd and 3rd petitioners are minor daughters. The 1st petitioner is not working woman she has to take care of the minor daughters and their education and for a decent way of life and livelihood, she needs maintenance amount. The trial Court considering all these aspects and also the way of life and status, had rightly ordered maintenance of Rs.5,000/- to the 1st petitioner and Rs.8,000/- each to the children viz., petitioners 2 and 3.

7. The lower appellate Court without any reason had passed order on the basis of the cost index. There is no reason as to how the cost index has been arrived at. Further the lower appellate Court giving a finding that it is the petitioner/wife, who have to prove the income of the respondent is not proper. In support of his contention the petitioner had relied upon the decision of this Court in Crl.R.C.(MD).No.470 of 2013 dated 14.09.2015, wherein this Court held that the duty to prove the income is only upon the husband, as contemplated under Section 106 of the Indian Evidence Act and also referred to the judgment of the Calcutta High Court in the case of Mosammat Mamuda Bibi Vs. Sk.Manirudding @ Monirul and another reported in 2005 (3) CHN 62.

8. He further submitted that the Apex Court in the case of Rajnesh Vs. Neha and another reported in 2021 (2) SCC 324 in paragraph 77 had given criteria for determining the quantum of maintenance. Further in paragraph 84 referring to the judgment of Bharat Hegde Vs. Saroj Hede reported in 2007 SCC OnLine Del 622 had given the factors to be considered for maintenance which are as follows:-

- 1.Status of the parties.
- 2.Reasonable wants of the claimant.
- 3.The independent income and property of the claimant.
- 4.The number of persons, the non-applicant has to maintain.
- 5.The amount should aid the applicant to live in a similar lifestyle as he/ she enjoyed in the matrimonial home.
- 6.Non-applicant's liabilities, if any.
- 7.Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.



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8. Payment capacity of the non-applicant.

9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation.

11. The amount awarded under Section 125 Cr.P.C is adjustable against the amount awarded under Section 24 of the Act.

9. Thus the trial Court granting the maintenance is proper. The lower appellate Court without any reasoning referred to the cost index without any materials had modified which is not as per law. Hence, prayed for setting aside the order of the lower appellate Court.

10. The learned counsel for the respondent submitted that the trial Court on the evidence of the petitioner that the respondent used to say that he is earning an income of Rs.5,00,000/- per month cannot be a yardstick to calculate the maintenance. In fact in her cross examination she admits the income is only Rs.50,000/-. Further the agricultural property does not fetch any reasonable income. The respondent had got second marriage and he has to take care of them and the income he is earning is hand to mouth existence. The trial Court arriving at the quantum of maintenance is on the higher side and not commensurate with the income of the respondent. The lower appellate Court finding the trial Court reasoning not proper had rightly reduced the quantum of maintenance following the cost index. Further they were progressively worked out and the quantum of maintenance is periodically increased. The 1st petitioner herself having deserted the matrimonial home cannot claim any maintenance. He further submitted that as per the orders of the lower appellate Court the respondent has been regularly making the payment of maintenance.

11. The learned counsel for the petitioners intervened at this point and submitted that for the past 10 months the respondent is not making any payment of maintenance.

12. Upon hearing the counsel on either side and on perusing the materials available on record, this Court finds that the finding given by the trial Court is with proper reason and needs no interference. The lower appellate Court relying upon the cost index is without any proper material and reasoning.

13. In view of the same, this Court is inclined to set aside the order of the lower appellate Court viz., Additional District and Sessions Judge, Thiruvavur dated 11.07.2018 made in



Crl.R.P.No.6 of 2017 and confirm the order of the trial Court viz., District Munsif Court, Judicial Magistrate Mahila FTC, Tiruvarur dated 03.01.2017 made in Crl.M.P.No.6 of 2014.

14. With the above observations this criminal revision case is disposed of.

15. The petitioner shall file calculation memo before the trial Court within a period of two weeks from the date of receipt of a copy of the order and thereafter, the trial Court to consider the calculation and pass appropriate orders as per the original order dated 03.01.2017.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Additional District and Sessions Judge,
(Mahila F.T.C) Tiruvarur.
2. The District Munsif,
The Judicial Magistrate,
Mahila FTC, Tiruvarur.

+3ccs to Mr.I.Abdul Basith, Advocate, S.R.No.27785
+1cc to Mr.K.Thenrajan, Advocate, S.R.No.28129

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GSM(CO)
PM/04/05/2022