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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.01.2022

DELIVERED ON : 11.02.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.521 of 2021

1.Suresh Kumar
2.Palanivel
3.Parameswari
4.Nithyakalyani .. Petitioners

Vs.

Sangareswari .. Respondent

Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to set aside the order in Criminal Appeal No.98 of 2019 on the file of the V Additional District and Sessions Judge, Madurai dated 23.03.2021 which was confirmed in D.V.O.P.No.6 of 2017 on the file of the District Munsif cum Judicial Magistrate, Peraiyur dated 15.07.2019.

For Petitioners : Mr.J.Gunaseelan Muthiah

For Respondent : Mr.S.Deenadhayalan

ORDER

This petition has been filed to set aside the order passed in Criminal Appeal No.98 of 2019 on the file of the V Additional District and Sessions Judge, Madurai dated 23.03.2021, which was confirmed in D.V.O.P.No.6 of 2017 on the file of the District Munsif cum Judicial Magistrate, Peraiyur dated 15.07.2019.

2.The revision petitioners are the respondents and the respondent is the petitioner in D.V.O.P.No.6 of 2017.

3.Brief substance of the petition in D.V.O.P.No.6 of 2017 is as follows:

The petitioner is the wife of the first respondent. The second and third respondents are the parents of the first respondent. The fourth respondent is the sister of the first respondent. The marriage between the petitioner and the first

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respondent was solemnized on 09.09.2015. The petitioner was given 25 sovereign of gold and Rs.1,00,000/- as cash and Rs.2,00,000/- worth household articles. The petitioner and the respondents lived together as joint family. The respondents got the jewels of the petitioner and refused to give back the jewels to the petitioner. The respondents mixed something in the milk of the petitioner and thereby, the petitioner fainted. Subsequently, the first respondent and the petitioner lived as separate family in Kallikudi. The first respondent used to consume alcohol and torture the petitioner by beating her. The first respondent took away the washing machine that belong to the petitioner and handed over the same to his lover by name Latha. On 29.05.2017, the respondent drove the petitioner away from the house. The first respondent is working in a finance company and is earning Rs.20,000/- per month. He is earning Rs.10,000/- from the agriculture lands. The respondents are to be punished for harassing the petitioner and the petitioner has to be given Rs.12,000/- per month towards maintenance and Rs.5,00,000/- towards mental agony. The respondents have to return back 25 sovereign of gold and Rs.2,00,000/- (Rupees Two lakhs only) worth household articles and Rs.1,00,000/- cash. The first respondent is directed to pay Rs.6,000/- per month till the disposal of the case.

4.Brief substance of the counter filed by the first respondent and adopted by other respondents is as follows:

It is true that the petitioner was given 25 sovereign of gold and Rs.1,00,000/- cash and Rs.15,000/- worth household articles at the time of marriage. In turn, the respondents gave Rs.10,000/- worth silk saree and 1½ sovereign of gold chain to the petitioner. All the jewels that were given to the petitioner at the time of marriage are with her only. The petitioner did not do any household work and was talking in the cell phone. When the same was questioned by the first respondent, the petitioner used to quarrel with him. The petitioner is compelling the respondents to pay a sum of Rs.25,00,000/- and she is harassing the respondents. Due to the harassment of the petitioner, the first respondent filed a petition in H.M.O.P.No.612 of 2017 on the file of the Sub Court, Thirumangalam seeking divorce. The petitioner deserted the first respondent. She was earning Rs.10,000/- per month from a private hospital. The father of the petitioner is running a tea shop and is well off. The first respondent is working in a private company and was earning Rs.6,000/- per month and he has to manage his aged parents and prayed the petition to be dismissed.

5.Two witnesses were examined and ten documents were marked on the side of the petitioner. Two witnesses were examined on the side of the respondents. After hearing both sides, the trial Court ordered the first respondent to pay a sum of Rs.5,000/- towards maintenance to the petitioner on or before fifth of every english calendar month. Thereafter, the first respondent has to return back 25 sovereign of gold, Rs.1,00,000/- cash and Rs.2,00,000/- worth articles to the petitioner within a period of two months and to pay

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a sum of Rs.50,000/- towards mental agony caused to the petitioner within a period of two months and not to harass the petitioner directly or indirectly and that the Sub Inspector of Police, Villur has to provide protection for execution the above order. Against the order, the respondents have filed an appeal in Crl.A.No.98 of 2019 on the file of the learned V Additional District Judge, Madurai and the same was dismissed by the appellate Court. Aggrieved by the same, the petitioner has preferred this Criminal Revision Case.

6.On the side of the petitioners, it is stated that no proof was ever filed by the petitioner wife regarding the gold and the payment of cash and seerthana articles. There is no proof for causing mental agony. The maintenance amount fixed is without any valid documents. The complaint dated 10.07.2017 was filed before the police and the enquiry was made by the Police Officer. The payment of jewels and cash and articles were not proved by the evidence of P.W.1 to P.W.3. There is contradiction between the evidence of P.W.1, P.W.2 and P.W.3. The details of the jewels were not specifically mentioned in the petition. The marriage expenses were spent only by the first respondent husband. The household articles and jewels were already returned to the wife in the presence of community elders. The complaint in Crime No.71 of 2017 was registered against the husband under Sections 498(A), 406, 294(b), 506(i) and 494 of IPC on the file of the Thirumangalam All Women Police Station. P.W.2 and P.W.3 did not depose anything regarding the seerthana, cash, jewels and household articles. The entire jewels were already handed over to the father of the wife. Ex.A8 photocopy is not reliable. There is no proof regarding the extra marital relationship of the revision petitioner and prayed the revision to be allowed.

7.On the side of the petitioners, it is stated that the wife lodged a complaint before the Thirumangalam Police wherein she has stated that the revision petitioners were demanding her to hand over 25 sovereign of gold articles and the complaint itself reveals that the jewels are with her and not with the respondents. This aspect was not considered by the trial Court. Only based on M.O.8, photo, the trial Court passed this order. The allegation that the petitioners compelled the respondent to consume poisonous milk is wrong. The respondent filed a complaint wherein it was stated that the first petitioner offered the respondent that both of them can commit suicide. But later he did not consume poison. So the wordings in the complaint was contradicted to the case of the respondent. The first petitioner is ready to pay the monthly maintenance amount, since there is no jewels left with the petitioners and prayed the order to be set aside.

8.On the side of the respondent, it is stated that even though the trial Court has ordered for payment of monthly maintenance, so far the petitioners did not pay the monthly maintenance amount as and when the amount was due and only

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Rs.71,000/- was paid towards maintenance. But the arrears is more than Rs.2,70,000/-. No document regarding the complaints filed by the petitioners was filed by the petitioners before the trial Court. In fact no document was filed on the side of the husband before the trial Court. The jewels are retained by the revision petitioners still today. The petitioner cannot question the factual matrix before this forum at the stage of revision. The petitioner failed to comply with the order of the trial Court so far and prayed the petition to be dismissed.

9.An additional typed set of papers were filed on the side of the petitioners. Wherein a copy of the petition was filed on 23.06.2017, wherein, the respondent herein has filed the petition against the first petitioner before the Inspector of Police, All Women Police Station, Thirumangalam. This document was not marked on the side of the revision petitioner before the trial Court. Even before the appellate Court, the petitioner has not taken any steps to mark this document. No evidence was let in to prove the document. In the above circumstances, this document cannot be taken into consideration.

10. In the counter of the petitioner filed D.V.O.P.No.6 of 2017, it is stated that 20 sovereign of gold and Rs.50,000/- worth articles were given to the wife at the time of marriage. The only contention of the petitioner at the time of trial is that the articles and jewels and cash are only with the wife and not with the petitioners. The copy of the complaint filed by the petitioner by way of additional typed set of papers reveals that the complaint was lodged in the year 2017. Subsequently, the parties compromised and they lived together again. Only after two months the petition under this Act was filed by the wife.

11.The revision petitioners have accepted that 20 sovereign of gold were given to the petitioner and Rs.50,000/- worth articles were given to the petitioner by her parents. The contention of the petitioners is that the first petitioner offered 1 ½ sovereign of gold chain as a gift to the wife and the same was not denied by the wife. After deducting 1 ½ sovereign of gold, the petitioner ought to return 18 ½ sovereign of gold to the wife.

12.In the above circumstances, it is decided that the revision petitioners have to hand over 18 ½ sovereign of gold to the respondent. The revision petitioners have accepted that Rs.50,000/- worth articles were given to the petitioner at the time of marriage. In view of the same, the petitioners are directed to hand over Rs.50,000/- to the respondent.

13.It is seen that the revision petitioners failed to provide peaceful residence for the wife. There is chance for the wife to get mental agony and hence, the order passed by the trial Court for payment of Rs.50,000/- towards mental agony is reasonable. The

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order of payment of monthly maintenance is also reasonable. It is the duty of the first petitioner to provide a residence for the wife. Hence, the order of the trial Court regarding the arrangement for rental house is also reasonable. Instead of providing a rental house, the revision petitioners are hereby directed to pay Rs.1,000/- per month towards payment of rent to the respondent in addition to the monthly maintenance amount.

14.With the above modification, this Criminal Revision Case is disposed of.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

Mrn

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The V Additional District and Sessions Judge, Madurai.

2.The District Munsif cum Judicial Magistrate, Peraiyur.

+1 CC to M/s.S.DEENADHAYALAN, Advocate (SR-6035[F] dated 14/02/2022)

+1 CC to M/s.J.GUNASEELAN MUTHAIAH, Advocate (SR-5575[F] dated 11/02/2022)

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