



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.18239 of 2018

WEB COPY

Boobalan : Petitioner/Revision Petitioner/
Respondent
Vs.

Jothi : Respondent/Respondent/
Petitioner

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order of maintenance passed in Cr.R.P.No.19 of 2017, dated 19/04/2018 on the file of the Principal District Judge, Pudukkottai, confirming the order of maintenance awarded by Chief Judicial Magistrate, Pudukottai, in MC No.1 of 2016, dated 29/04/2017.

For Petitioner : Mr.A.Arul Jenifer

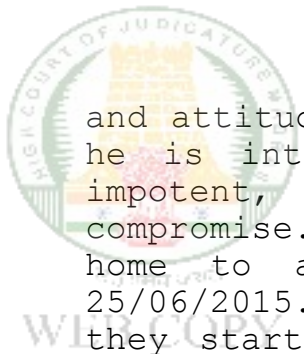
For Respondent : Mr.D.Ramesh Kumar

O R D E R

This criminal original petition is filed seeking in order to set aside the order of maintenance passed in Cr.R.P.No.19 of 2017, dated 19/04/2018 by the Principal District Judge, Pudukottai, confirming the order of maintenance awarded by the Chief Judicial Magistrate, Pudukottai, in MC No.1 of 2016, dated 29/04/2017.

2.The facts in brief:-

It is a matrimonial issue involving maintenance. The wife preferred MC No.1 of 2016 before the Chief Judicial Magistrate, Pudukottai with the following allegations:- The marriage between her and the petitioner took place, on 22/01/2015 as per their religious and family customary rites. At the time of marriage, the husband was working as Auditor in a Company called as 'Naventhan Company' at Nungambakkam, Chennai and drawing a salary of Rs.50,000/-. Considering the income of the husband, the wife was provided with sufficient jewellery, house-hold articles, etc. Right from the date of marriage, the husband refused to have conjugal relationship with the wife. When that was questioned, the husband started giving trouble under influence of alcohol. At the intervention of the family friends and elders, a separate residence was arranged, on 04.02.2015 at Chennai. Even thereafter, the conduct

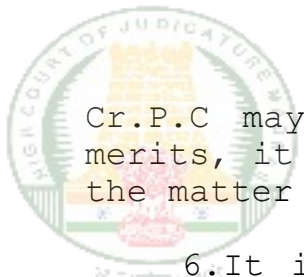


and attitude of the husband did not change. He started telling that he is interested only in homosex. Finding that the husband is impotent, the wife started questioning him. Again there was a compromise. Thereafter, she was taken to Pudukottai to her parental home to attend the funeral ceremony of her grand-mother, on 25/06/2015. When she demanded him to take her to matrimonial home, they started demanding dowry. So from the date onwards, she is living with her parents. So, she lodged a complaint before the All Women Police Station, Pudukottai, which was also registered in Crime No.12 of 2015. Similarly, the husband also gave a complaint against her before the Thiruthuraipoondi Police. In the above said Police Station, she has stated that she is not willing to live with her husband. So seeking maintenance amount of Rs.20,000/-, she filed a petition.

3.That was resisted by the husband on the ground that the wife was not maintaining proper distance from her aunt's son. When that was questioned, trouble has arisen. She was taken to Chennai. Right from the beginning, the wife was not cooperating for the conjugal relationship and always indulged in using the mobile phone. He has also stated that she wants to marry her aunt's son. She is also ill-treated the husband that he is not fit husband for her and using to live with the parental home frequently and lastly, she went for attending her grand-mother funeral ceremony. But started living there. Even in the compromise talk, the wife did not agree for cohabitation. Even in the police station, Rs.7,00,000/- was demanded from the husband. When that was not accepted, the case in Crime No.423 of 2015 was registered. It also came to his notice that on the previous occasion, the wife made a complaint against one Prabhu, as if he cheated her and a complaint was given before the Town Police station, which was registered in Crime No.243 of 2013 and thereafter, she received Rs.11,00,000/- from the family of the above said Prabhu for closing the case. According to the husband, the wife is not having good conduct and having relationship with several persons. She is also working in a private college and drawing sufficient income.

4.Heard both sides.

5.Finding that it is a matrimonial dispute between the husband and wife, it was referred to the mediation and in-spite of that, no compromise could be reached because of difference of opinion between the husband and wife. So the matter was heard on merits. The trial order has ordered a payment of Rs.3,000/- as maintenance amount. When the matter was taken on revision, the same order has been confirmed. The husband again before this court by way of filing this criminal original petition. At this juncture, it is contended on the side of the respondent that second revision in the form of petition under section 482 Cr.P.C may not lie, since the petitioner already availed the choice of revision before the revision court. No doubt



Cr.P.C may not lie. But however, since the matter was heard on merits, it is necessary for this court to go into the issue, so that the matter can be disposed on merits.

6.It is the specific allegation on the side of the respondent to the effect that the petitioner was impotent and was not having good conjugal relationship with her. When there is a specific allegation to the effect in the petition, the petitioner was cross examined on this aspect during the course of enquiry. He denied the allegation. Seeking divorce, the respondent appears to have filed a petition before the Family Court namely Sub Court, Pudukottai. But the petitioner has not chosen to resist the petition. During the course of cross examination, she has stated that she did not file any counter in the divorce petition. The reason for her not to resist the divorce petition shows that she is not interested in the matrimonial life. Noting that there is sufficient cause for the respondent to live away from the petitioner, the trial court has passed the order. It is further observed that right from the marriage, there is no cordial relationship between the husband and wife. Already a police complaint was lodged by the wife, but later, that matter might have been compromised. It is further noted that the petitioner has not taken any effort for cohabitation.

7.The contention on the part of the petitioner that the respondent was having a bad character and indulged in demanding money, making some false allegations. That also been negated by the trial court. This alleged bad conduct and character has been negated by the trial court for some reasons. It has been observed that the issue with one Prabu entered into compromise between the parties. According to the trial court, this will not create any doubt with regard to the character of the respondent. This fact has also been confirmed by the revisional court.

8.The facts and circumstances of the case shows that right from the date of marriage, there is no cordial relationship between the husband and wife and the wife has also initiated, not only criminal proceedings, but also divorce proceedings. This shows that the issue is out of the court and there is no possibility of reunion, since the mediation process failed. So, I find no reason to differ from the view of the trial court as well as the revisional court.

9.The duty of the petitioner to maintain the respondent cannot be denied and disputed and there is no record to show that the respondent is earning money to sustain herself. In the absence of any positive proof to show that the respondent is earning money, it is the duty of the husband namely the petitioner herein, to pay the maintenance amount.

10.As mentioned earlier, as has been ordered by the trial court, which was also confirmed by the revisional court, the amount of Rs. 1000/- per month for the present economic situation cannot be construed

