



Crl.RC No. 287 of 2018 & 1444 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2023

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.R.C. No. 287 of 2018 & 1444 of 2017
and Crl.M.P. Nos.3355 of 2018 & 14345 of 2017

Crl.R.C. No.287 of 2018
and Crl.M.P.No.3355 of 2018

Jahirabanu

... Petitioner / Wife

Vs.

Jallaludin

... Respondent / Husband

Criminal Revision Petition is filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the order dated 21.07.2017 made in Criminal Appeal No.209 of 2014 on the file of the XV Additional Sessions Judge, Chennai by confirming the order dated 16.07.2014 made in M.C. No.72 of 2012 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai and allow the above Criminal Revision Petition.

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



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CrI.R.C. No.1444 of 2017
and CrI.M.P.No.14345 of 2017

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Jallaludin

... Petitioner / Appellant / Husband

Vs.

Jahirabanu

... Respondent / Respondent / Wife

Criminal Revision Petition is filed under Section 397 r/w. 401 of Criminal Procedure Code, to call for the records in C.A. No.209 of 2014 dated 21.07.2017 in M.C.No.72 of 2012 “directing the petitioner to pay the sum of Rs.50,000/- per month to the respondent towards maintenance on or before 5th of every English Calendar month is modified as Rs.20,000/- per month from the date of petition and set aside the order of the trial Court directing the petitioner to pay the sum of Rs.5,00,000/- as compensation to the respondent and the residential order passed by the trial Court is hereby confirmed. There is no modification with regard to order of the trial Court directing the petitioner herein to pay the sum of Rs.2,00,000/- towards marriage expenses at the time of marriage of his daughter. Accordingly the order of the XXIII Metropolitan Magistrate, Saidapet, Chennai in MC No.72 of 2012 dated 16.07.2014 is modified” and set aside the same by allowing the appeal.

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

For Respondent : Mr.A.Kumaraguru



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COMMON ORDER

These petitions have been filed challenging the Judgment passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai dated 21.07.2017 made in Crl.A. No.209/2014.

2. The revision petitioner in Crl.O.P.No.287 of 2018 is the wife and the revision petitioner in Crl.No.1444 of 2017 is the husband. For the sake of convenience the wife is referred as 'petitioner' and the husband is referred as 'respondent' in this order.

3. The petitioner had filed a complaint before the Protection Officer by alleging that she was subjected to cruelty by her husband who failed to pay any maintenance to her and her children. She further alleged that her husband became angry when she questioned about maintenance and assaulted her. On 14.06.2012 the petitioner along with her daughter went to her husband's complex at Park Town and she found him with the company of another woman by name Nasima Begum. When she questioned about that, the husband had beaten and chased her away. In this regard the petitioner had given a complaint on 18.06.2012 and she was called for



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enquiry. The petitioner and the children went to house of Nasima Begum and asked her to leave her husband but Nasima Begum, her four sisters, her uncle and uncle's son assaulted her. The police who arrived at the spot also abused the petitioner and threatened her. As she could not meet out the rent for her house the landlord asked her to vacate the house. Hence the complaint was filed before the Protection Officer by alleging domestic violence against the respondent. The said complaint was forwarded to the Jurisdictional Judicial Magistrate for enquiry.

4. The respondent / husband had filed a counter by alleging that he had married the respondent on 15.09.1985 and it was a love marriage. Initially the couple lived happily. Their first son Jahurudeen is an Engineer and he is working abroad and now he is settled in India and is earning Rs.75,000/- per month. The second daughter Jasimas Yasmin had completed M.B.B.S. and is doing House Surgeon at Sri Ramachandra Medical College and the third son Shaik Sabirudin is doing his final year in B.E. The respondent being a responsible father had taken care of the children and the education expenses of the children. During February, 2012 the respondent gone to business tour and he returned to India and at that time he was not



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allowed to enter his house. He was abused and thrown out of the matrimonial home. The petitioner made false allegation against the respondent that he was living an immoral life and that she was brutally beaten up by him on 14.02.2012. In fact it was the husband who was brutally beaten on the alleged day by the brother and relatives of the petitioner. In this regard the husband lodged a complaint and the police had taken action by detaining the brother and relatives of the petitioner. The respondent was called for enquiry by W22 All Women Police Station, Mylapore, Chennai in view of the complaint given by the petitioner. Even in the enquiry conducted by the police the petitioner refused to join with the husband. The wife had given 250 sovereigns of gold to the respondent apart from diamond jewellery. It is false to allege that he had demanded dowry and 100 sovereigns of jewel from his wife.

5. During course of enquiry the learned Magistrate examined herself as P.W.1 and marked Exs.P1 to P8. On the side of the respondent he examined himself as R.W.1 and marked Exs.R1 to R12. After a full fledged enquiry the trial Court fixed the maintenance payable by the husband for a sum of Rs.50,000/- per month and ordered to pay the arrears from the date



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of petition till the month of July,2014 (3 months) and thereafter at the same rate from the month of July, 2014. A sum of Rs.5,00,000/- was ordered to be paid to the wife as compensation and a residential order has also been passed by directing the husband to provide a house which has a single bedroom, reception, kitchen, bathroom & toilet with basic amenities and facilities at a safe place and the rent for the said house should be borne by the husband. However the respondent / husband was also directed to pay a sum of Rs.2,00,000/- towards the marriage expenses of the daughter of the couples.

6. Aggrieved over the said order the respondent had filed an appeal before the XV Additional Sessions Judge, Chennai and the appeal was partly allowed by amending the monthly maintenance from Rs.50,000/- to Rs.20,000/- per month including the arrears at the same rate and the order to pay compensation of Rs.5,00,000/- was set aside and the order to pay compensation of Rs.2,00,000/- towards the marriage of the daughter was not modified. So as of now, as per the modified order the husband has to pay the maintenance of Rs.20,000/- per month to the wife including the arrears along with Rs.2,00,000/- towards the marriage expenses of the daughter.



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The order of the Magistrate was passed on 16.07.2014 and the appellate Court has modified the order on 21.07.2017. Aggrieved by the order of the learned XV Additional Sessions Judge, both the husband and wife had filed these revisions.

7. The learned counsel for the petitioner / wife submitted that the husband had not paid maintenance as ordered though the respondent has got enough source of income and he has got properties from which he gets rental income; the respondent is not willing to abide the order of the Court; in the present cost of living the amount of maintenance at Rs.50,000/- is very nominal but the learned appellate Judge had reduced it grossly to Rs.20,000/-; with the amount so ordered it is not possible to maintain the petitioner and her children; the sum of Rs.50,000/- as ordered by the trial Judge is very reasonable and the order of the trial Judge should be restored; the amount of compensation is at Rs.5,00,000/- is also very reasonable; without any reason the said order for paying compensation was set aside and that same should also be restored.



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8. The learned counsel for the respondent / husband submitted that the husband is suffering from Parkinson disease and he does not earn any income to pay maintenance to the wife; it is the respondent / husband who had maintained the children and educated them well; the first son has become a major and he is a B.E. Graduate and he only is maintaining his mother, due to the incapacity of his father; as a dutiful father the respondent is willing to pay Rs.2,00,000/- towards the daughter's marriage; since the maintenance at the rate of Rs.20,000/- is burdensome and the respondent is not able to meet out the same, the same should be reduced to Rs.10,000/-.

9. The marriage between the petitioner and the respondent was not denied and they have three children borne out of their wedlock. The couple have two sons and one daughter. The first son of the couple is a major and he has completed B.E. and presently working at Chennai. The daughter had completed her M.B.B.S. course. The third son is doing B.E. The petitioner had left the house during September, 2011. She had admitted that all the children were educated by the husband but however she added that he would not pay their fee in time. So it appears that the rift between the couple had started in the year 2012. Even according to the evidence of P.W.1



during the month of May, 2012 the husband was maintaining the family and children in a proper manner.

10. The marriage between the couples have taken place in the year 1985. Despite they lived successfully for nearly 28 years, it appears that the problems started because of the doubts developed by the wife on the conduct of the husband that he had developed an intimacy with one of his female staff. Since the respondent had disowned the family all of a sudden, the petitioner who has been living as a homemaker for several years became helpless.

11. The husband had got ten shops at his native place at Mayavaram and those shops were let out for rent. The husband had also got a shopping complex at Park Town, Chennai and he has let out those shops for rent. Whatever may be the problem between the couples the fact remains that the petitioner could not compromise with her husband after she developed a suspicion over him that he had an illegal intimacy with another woman. Since the respondent stopped paying the rent for the house where the family lived, the landlord started to give pressure to the wife by demanding the



rent. So she was compelled to vacate the house.

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12. The marriage between the couples was a love marriage. The petitioner belonged to a different religion and for the purpose of her marriage she converted her religion from Christian to Islam. After having married the respondent by opposing her family members, she severed her relationship with her parents and other relatives and started to completely depend upon the respondent. Irrespective of the reason for which the couple got separated, the husband has got a bounden duty to maintain his wife and children. After having separated from the family the respondent did not take any efforts to rejoin with the petitioner. The relationship between the respondent and the petitioner has strained to the extent that it cannot be mended. Under such circumstances the only remedy that can be available to the petitioner is to seek maintenance for herself and her children. Though it is correct to state that the first son of the couples is employed as an Engineer, he would have his own commitments and it cannot be expected from a brother that he would contribute to his sister's marriage or to bare the educational expenses of his younger brother.



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13. It was stated that at the time when the litigations were filed, the first son was living along with his mother and subsequently he came back to his father. The third son who was at that point of time lived with the father returned to the custody of the mother. Under such circumstances, the responsibility will lie on the head of the petitioner to maintain her son who was a student and the daughter who was not actively employed after finishing her course in medicine.

14. If the petitioner and her children deprived of the basic necessity like food and shelter they have no other go except to file a petition alleging domestic violence. The amount of Rs.2,00,000/- was ordered to be paid towards marriage expenses of the daughter is of the year 2014 and the said amount was not paid so far. However the learned counsel for the respondent admitted that he is ready to bear the expenses of his daughter's marriage even if it goes beyond Rs.2,00,000/-. Due to escalation of price and cost of living it is not possible to meet out the daughter's marriage with the sum of Rs.2,00,000/-. Since exact amount for the marriage expenses cannot be fixed now and the respondent also does not hesitate to take up the said commitment, I feel the said order to pay Rs.2,00,000/- can be treated as



portion of the expenses of the daughter's marriage and that can be confirmed as such.

15. So far as the amount of maintenance to be payable to the petitioner is concerned, it is seen that the appellate Court has reduced it from Rs.50,000/- to Rs.20,000/-.

16. The learned counsel for the petitioner / wife submitted that the respondent has got rental income from the shops owned by him at Mayavaram and Park Town, Chennai and to pay a sum of Rs.50,000/- per month is not a big deal for him and considering the status and circumstances in which the wife and her children have been living all along, the amount of maintenance should be fixed at Rs.50,000/-.

17. The learned counsel for the respondent / husband submitted that the husband is suffering from Parkinson disease and he is bed ridden. He further submitted that he had sold all his properties just to meet out the educational expenses of his children and hence he is left with no property.



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18. The respondent was running a travel agency and he had also involved in the real estate business. So it cannot be said that the respondent was solely dependent upon his rental income or the sale consideration of his shops to maintain his children or to meet out their educational expenses. Even if it is taken for the sake of argument that the husband had sold away the shops at Park Town and other shops at Mayavaram that would have been sold for a hefty amount and hence it cannot be believed that all those amounts have been spent on the education of the children.

19. It is true that the respondent was earning a good income through his travel agency business. Since the husband was earning a very good income it was possible for him to meet out the educational expenses of the children from the income earned from his occupation, and he had sold the property only for the purpose of meeting out the educational expenses of the children cannot be believed. If the properties of the husband was sold and converted into cash it may not be possible for the petitioner to execute the decree by attaching his properties. So the respondent would have opted a shortcut method to dilute his properties by converting into cash. Hence the submission of the learned counsel for the respondent that the husband has



become incapable due to his disease cannot be accepted as a reason for denying the maintenance payable to the petitioner.

20. Since the husband is comfortable and he has means to meet out his own medical expenses and the maintenance that has been ordered by the Court, I do not feel it is appropriate to reduce the maintenance from Rs.20,000/- to Rs.10,000/- as requested by the husband.

20. The learned counsel for the petitioner / wife submitted that the amount of maintenance should be restored to Rs.50,000/- from Rs.20,000/-. If the husband provides house with a reasonable amenities and comforts as elaborated by the Courts below, the wife need not have the demand for more money towards her maintenance. The daughter of the petitioner would also get married shortly and the husband had undertaken to meet out his daughter's marriage expenses. The second son who was studying Engineering when the litigation was pending before the Courts below would have finished his course by this time and he would have got employed. So the amount of Rs.20,000/- which has been fixed due to modified order of the appellate Court would be sufficient enough to meet out the expenses of



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the petitioner. In the given status and comfort which the petitioner and her children are living a sum of Rs.20,000/- is very low and reasonable. Hence I do not find any justifiable reason to reduce it further. At the same time, I do not feel there is any necessity to increase the said amount from Rs.20,000/- to Rs.50,000/- when the husband meets out the rent of the house where the wife is going to live.

22. In view of the above stated reasons, I do not feel any acceptable reason to interfere with the judgment of the learned appellate Judge in modifying the amount of maintenance of Rs.50,000/- to Rs.20,000/- and confirming the compensation of Rs.2,00,000/- towards the marriage expenses of the daughter. It is clarified that the said sum of Rs.2,00,000/- is not sufficient to meet out the marriage expenses of the daughter with the present cost of living and hence it is for the respondent / husband who has to take bear the entire marriage expenses of his daughter.

23. The petitioner / wife is not deprived to collect her arrears of maintenance if it was not duly paid by the respondent as per the order of the Courts below. However paying compensation of Rs.5,00,000/- is on the



higher side and the learned appellate Judge has rightly chosen to dismiss the same. As such the order of the appellate Court does not require any interference due to the above stated reasons.

24. In view of the above stated reasons, both the Criminal Revision Petitions are dismissed. Connected miscellaneous petitions are closed.

25.01.2023

Index : Yes/No
Speaking Order : Yes / No
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To:

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1. The XV Additional Sessions Judge,
Chennai.
2. The XXIII Metropolitan Magistrate,
Saidapet,
Chennai.



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R.N.MANJULA, J.,

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