

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/12/2002

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THE HON'BLE MR.JUSTICE P.SATHASIVAM

Crl.R.C. No.459 of 2001

and

Crl.M.P.No.2232 of 2001

V.Ponnuswamy Petitioner

-Vs-

1. Tmt.Jaya Mary

2. Anbu Selvi

3. Anbarasu Respondents

Criminal Revision Case against the order dated 29.3.1995 in M.C.No.1 of 1992 on the file of the Judicial Second Class Magistrate II, Poonamallee.

!For petitioner : Mr.V.K.Sathiamurthy

^For respondents: Mr.A.Palaniappan.

:ORDER

Aggrieved by the order of the Judicial Magistrate II, Poonamallee dated 29.3.1995 made in M.C.No.1 of 1992, the petitioner-husband has preferred the above revision. The respondents herein filed M.C.No.1 of 1992 claiming maintenance at the rate of Rs /= per month against the petitioner herein under sec.125 of the Cr.P.C. before the Judicial Magistrate II, Poonamallee.

According to the respondents herein-the petitioners therein, the petitioner and the first respondent herein got married on 1.7.1974 at Vasudevanallur, Tirunelveli District and after the marriage, they were living at No.114, Butt Roas, St.Thomas Mount, Madras. Two children viz., respondents 2 and 3 herein were born to them. In the petition before the court below, the first respondent wife has alleged that due to family circumstance and in order to lead a wayward life, her husband deserted them. She has further stated that they are unable to maintain themselves. On the other hand, her husband is employed in Hindustan Teleprinters Limited and earning Rs.4000/= per month apart from having a house property at St.Thomas Mount. The said petition was resisted by the husband by filing counter statement. He has stated that it was the wife-first respondent herein who left his company. He also alleged that she is leading an adulterous life and legally she is not entitled to any maintenance.

2. Before the court below, two witnesses were examined on the side of the petitioners therein and no document was marked. On the other hand, on the

side of the husband, himself was examined as RW1 and he examined four witnesses as R.W.s 2 to 5 and ed Exs.R1 to R17 in support of his defence. The learned Judicial Magistrate, after holding that there was valid marriage between the petitioner and the first respondent herein and two children (respondents 2 and 3 herein) were born to them, the wife is justified in living separately and unable to maintain herself, passed an order granting maintenance at the rate of Rs.300/= per month in favour of the wife and the daughter and Rs.400/= per month in favour of the son. Questioning the said order in so far as it relates to payment of maintenance in favour of the first respondent-wife, the petitioner has preferred the above revision.

3. Though notice was served on all the respondents, they have not chosen to engage a counsel to contest the matter.

4. Point for consideration in this revision is whether the court below is justified in granting maintenance in favour of the first respondent-wife and whether the petitioner-husband has established the fact that his wife is leading adulterous life. As the petitioner is not questioning the order granting maintenance in favour of respondents 2 and 3, it is not necessary for me to consider the same. Let me consider whether the wife-first respondent herein is entitled to maintenance as ordered by the court below.

5. In order to consider the said question, it is useful to refer to sub-section 4 of section 125 Cr.P.C., which reads as follows:-

"(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."

As per the above provision, if it is established that wife is living in adultery, she is not entitled to receive an allowance from her husband by way of maintenance. Since the plea viz., the wife is living in adultery has been raised by the husband, it is for him to prove the same. In the counter statement, the husband has specifically averred that in the year 1988, after taking leave from his office, he visited his house at St.Thomas Mount around 3.30 p.m., and at that time, he noticed a scooter bearing registration No.TMS 1632 belonging to one Thiruchelvan was parked in front of his house and the door was locked. After noticing the scooter of Thiruchelvan, he suspected the conduct of his wife and by applying force, he opened the door and found that the said Thiruchelvan and his wife were lying in bed in a compromising position. It is further averred that on seeing him, Thiruchelvan sped away from the scene of occurrence. The same has been reiterated before the court by the husband as RW1. While considering the evidence of RW1, particularly with regard to the said incident, the learned Trial Judge, after holding that there is no other independent witness for the said occurrence, disbelieved his version.

6. In a matter like this, the court cannot expect more witness to speak about the occurrence. I have already referred to specific assertion in the counter statement and categorical statement of RW1 before the court. Merely because, no one has raised alarm or no hue and cry, the statement of RW1 cannot be rejected as without any basis. It is also seen that with reference to such incident, the husband has made a complaint to the police and also to SC/ST association. It is evident from Exs.R6 to R10. This fact has been accepted by the learned Magistrate. The other three witnesses viz., R.W.s 2 to 5 have also referred to the conduct of the wife, more particularly, the

fact that she was having a jolly ride in a scooter along with Thiruchelvan. R.W.s 2 to 5, after noticing their company and relationship, informed RW1. Though PW1 has denied such fact, after going through the entire materials, particularly, the specific plea raised in the counter statement and the evidence of R.W.s 1 to 5 and the documents produced on the side of the husband, I am of the view that the husband has established his claim that the wife is leading an adulterous life. I am also satisfied that the husband has placed acceptable oral and documentary evidence to show that his wife is having illicit intimacy with one Thiruchelvan and is living in adultery. The reason giving by the learned Judicial Magistrate for discarding the oral and documentary evidence let in on the side of the husband cannot be accepted. The learned Magistrate has committed error in disbelieving the version of RW1 in the light of his specific assertion in the counter statement coupled with the evidence of R.W.s 2 to 5 and Exs.R6 to R10. In the light of the fact that there is ample evidence to show that the wife was living in adultery and in view of sub-section 4 of section 125 Cr.P.C., she is not entitled to an allowance from her husband. I have already referred to the fact that the petitioner-husband is not questioning the grant of maintenance in favour of the children.

In the light of what is stated above, the order passed by the Judicial Magistrate II, Poonamallee dated 29.3.1995 granting maintenance in favour of the wife-first respondent herein at the rate of rs.300/= per month is set aside and in other respects the order is confirmed. The criminal revision case is allowed. The connected Crl.M.P is closed.

Index: Yes.

Internet: Yes.

Ssk.

P.SATHASIVAM,J.

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