

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Cr1.R.C.No.311 of 2003

Suseela

.. Revision Petitioner/Petitioner

Vs.

Palaniswamy

.. Respondent/Respondent

Prayer: This Criminal Revision has been preferred under Section 397 and 401 of Cr.P.C., against the order dated 28.11.2002 in M.C.No.64 of 1999 on the file of the learned Judge of the Family Court, Salem.

For Appellant : Mr.M.Devaraj

For Respondent : Mr.M.Sathyanarayanan

ORDER

This revision petition has been preferred against the order passed in M.C.No.64 of 1999 on the file of the Family Court, Salem, dated 28.11.2002. The wife, the first petitioner in M.C.No.64/99, is the revision petitioner herein and the petitioners had filed M.C.No.62/99 under Section 125 of Cr.P.C., claiming maintenance from the respondent/husband at the rate of Rs.1000/- per month each for herself and her minor daughter Gowri.

2. The brief facts in the said petition relevant for the purpose of deciding this revision are as follows:-

The marriage between the first petitioner Suseela and the respondent Palanisamy took place on 9.3.1986 at Sri.Eswaran Temple of Veppilaipatty as per the Hindu Customary rites. The respondent was employed in Railway department and he was posted at Villupuram at the time of the marriage between the 1<sup>st</sup> petitioner and the respondent. After the marriage both the 1<sup>st</sup> petitioner and the respondent lived together at Villupuram and the 1<sup>st</sup> petitioner gave birth to the 2<sup>nd</sup> petitioner. The matrimonial life between the 1<sup>st</sup> petitioner and the respondent went on happily only for six months. Thereafter the respondent had developed illicit intimacy with another girl at Villupuram and also addicted to drinks. On 18.09.1989 for the 'Seemantham' function also the respondent did not turn up. The respondent has failed to maintain the 1<sup>st</sup> petitioner and her minor daughter the 2<sup>nd</sup> petitioner. Subsequently, the respondent

has been transferred from Villupuram to Thiruvannamalai. Under the pretext of non-availability of residence the respondent did not take the 1<sup>st</sup> petitioner along with him to Thiruvannamalai. Again the respondent/husband was transferred to Trichy. Out of compulsion the respondent took the petitioners to Trichy and they lived together for few months there. After wards the respondent had driven the petitioners out of the matrimonial home and now the petitioners took asylum in the house of the 1<sup>st</sup> petitioner's parents. In spite of the advice given by the panchayators and the parents of the 1<sup>st</sup> petitioner, the respondent failed to maintain the petitioners'. The 1<sup>st</sup> petitioner now find it very difficult to meet the educational expenses of the 2<sup>nd</sup> petitioner. There is not separate income for the 1<sup>st</sup> petitioner to maintain the petitioners. To provide medical assistance, food, shelter and education to the 2<sup>nd</sup> petitioner, the 1<sup>st</sup> petitioner requires at least Rs.1000/- per month each towards maintenance. The respondent is getting a monthly salary of Rs.5000/-, besides his monthly salary the respondent is also running a finance business and out of the said business he is getting Rs.4000/- per month by way of interest. The respondent is having house and land through which he gets an income of Rs.2000/- per month.

3. The respondent in his counter would admit the marriage between the 1<sup>st</sup> petitioner and the respondent. He would state that after the marriage they lived together at Villupuram till 1999. According to the respondent, 6 months after the marriage out of her own volition the 1<sup>st</sup> petitioner had left the matrimonial home and now she is residing with her parents. Whenever the respondent approaches the 1<sup>st</sup> petitioner to come and live with him, the same was rejected, by her by alleging that the respondent is living with another woman and on the ground of cruelty, the 1<sup>st</sup> petitioner filed a false complaint against the respondent with Mallur Police in the year 1998 and also another complaint on 16.12.1987. But no action was taken by the police on those complaints. A panchayat took place between the 1<sup>st</sup> petitioner and the respondent, in which an agreement was entered into between the 1<sup>st</sup> petitioner and the respondent and as per the terms of the agreement the respondent has to deposit Rs.25,000/- for a period of 5 ¼ years in the Agricultural Co-operative Bank, Euralnatham, and a liberty was given to the 2<sup>nd</sup> petitioner to withdraw the said amount after she became major. For the said arrangement the 1<sup>st</sup> petitioner has also agreed to and signed in the agreement. The 1<sup>st</sup> petitioner's father has got 7 acres of land and the 1<sup>st</sup> petitioner is the only daughter to her parents and she is in a very affluent situation and she does not require any maintenance from this respondent. This respondent is drawing a monthly salary of Rs.3000/- only and he has to maintain his aged parents.

4. Before the trial Court P.W.1 and P.W.2 were examined and Ex.P.1 and Ex.P.2 were marked on the side of the petitioners. R.W.1 to R.W.4 were examined and Ex.R.1 was marked on the side of the respondent. After going through the oral and documentary evidence let in before the trial Court, the learned trial judge has held that the 1<sup>st</sup> petitioner is not entitled to get any maintenance, but awarded Rs.750/- per month towards

maintenance for the 2<sup>nd</sup> petitioner. Aggrieved by the findings of the learned trial judge, the 1<sup>st</sup> petitioner has preferred this revision as against the dismissal of her claim for maintenance.

5. Now the point for determination in this revision is whether there is any substantial ground for rejecting the claim of the 1<sup>st</sup> petitioner for maintenance by the trial Court?

6. The Point:- Only on the ground that the 1<sup>st</sup> petitioner is living separately from the matrimonial home, the learned trial judge has negatived her claim for maintenance, which in my opinion is against the provisions of law. The factum of marriage between the 1<sup>st</sup> petitioner and the respondent has been admitted by the respondent. It is further admitted that still the 1<sup>st</sup> petitioner is living only with her minor daughter, the 2<sup>nd</sup> petitioner, and she has not married any one else. The reasoning given by the 1<sup>st</sup> petitioner for her separate living is that the respondent had developed illicit intimacy with another woman while he was working at Thiruvanamalai and that he is addicted to drinks and very often he use to beat her for no reason. Section 125 Cr.P.C., is an enabling provision of law which is a boon for the uncared, abandoned wives, destitute children and uncared parents. As per the explanation to section 125 (3) Cr.P.C., if any husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him. As per sub-clause 4 to Section 125 of Cr.P.C., unless it is proved that the wife is living in adultery and without sufficient reason she refused to live with her husband and if both the husband and wife are living separately by mutual consent then only the wife will not be entitled to receive any maintenance. In this case, there is no allegation that the 1<sup>st</sup> petitioner is living in adultery and there is no ground made out by the respondent that without any sufficient reason she is living away from the respondent and there is also no proof that both the husband and wife are living separately by mutual consent. Under such circumstances, as a legally wedded wife, the 1<sup>st</sup> petitioner is entitled to get an order of maintenance as per section 125 of Cr.P.C. Without any rhyme or reason the learned trial judge has rejected the claim of maintenance for the 1<sup>st</sup> petitioner. The learned counsel appearing for the respondent would contend that as per the decision taken in the panchayat as spoken to by R.W.2 to R.W.4, a sum of Rs.25,000/- has been deposited. The evidence of R.W.3 & 4 will go to show that the respondent has deposited Rs.25,000/- in the name of one of the panchayators (R.W.3) and also in the name of VAO. But that is not the terms of the agreement before the panchayators. A reading of Ex.R.1, the marriage cancellation agreement, dated 30.3.1999, as per the terms of the said agreement, the respondent had agreed to deposit Rs.25,000/- in the name of the minor 2<sup>nd</sup> petitioner in Primary Agricultural Co-operative Bank, Kuralnatham for a period of 5 ¼ years and that the 2<sup>nd</sup> petitioner is permitted to withdraw the said amount at the time of her marriage. But it is not in evidence that as per the terms of the agreement the respondent had deposited Rs.25,000/- in the name of the 2<sup>nd</sup> petitioner. Under such



circumstances, it cannot be said that under Ex.R.1 both the 1<sup>st</sup> petitioner and the respondent have divorced their marriage. To show his bonafides the respondent has not filed any petition for restitution of conjugal rights. The reasoning given by the 1<sup>st</sup> petitioner in her petition and in her evidence as P.W.1 is that since the respondent had developed illicit intimacy with another woman and also that she was subjected to cruelty by beating her after consuming liquor, she is living in her parents' house with the minor child. So the reasoning given by the learned trial judge for rejecting the claim of the 1<sup>st</sup> petitioner for maintenance, in my opinion cannot be sustainable. The 1<sup>st</sup> petitioner has claimed only Rs.1000/- towards her maintenance. In Today's cost of living, it will be very difficult to meet the expenses with the meagre amount of Rs.1000/-. She has to provide education to the child, wearing apparels to the child and for herself and rent for the house and also to meet day to day sundry expenses, medical expenses besides food. The trial Court has awarded only Rs.750/- towards maintenance of the minor 2<sup>nd</sup> petitioner, as against it there is no dispute. Under such circumstances, I am of the view that it will be appropriate to direct the respondent to give Rs.1000/- per month towards maintenance of the 1<sup>st</sup> petitioner too. Point is answered accordingly.

7. In the result, the revision is allowed and the order of the trial Court in M.C.No.64 of 1999 on the file of the Family Court, Salem, as against the 1<sup>st</sup> petitioner is set aside and the 1<sup>st</sup> petitioner is entitled to get Rs.1000/- per month towards her maintenance from the date of filing of the petition till she gets married with costs. At this juncture the learned counsel for the respondent would contend that the respondent has deposited Rs.25,000/- with the panchayator and the said amount may be adjusted towards the arrears of maintenance. I am afraid that this court cannot pass such an order without any material. If a third party has the amount, it is for the respondent to get back the same and to pay the maintenance to the 1<sup>st</sup> petitioner.

ssv

Sd/

Asst. Registrar

/true copy/

Sub Asst.Registrar

To,  
1.The Judge,Family Court,  
Salem.

+ One cc to Mr. M. Devaraj, Advocate SR 20814

NG (co)

sg 8/5/07

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