

Madras High Court

Hari Har Raj Kalingarayar vs Aarti on 22 June, 2018

In the High Court of Judicature at Madras

Dated: 22.06.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

CrL.R.C.No.1015 of 2016

Hari Har Raj Kalingarayar

... Petitioner

Vs.

1.Aarti

2.Minor Tarini

3.Minor Shivani

... Respondents

(Minors represented by mother
and 1st petitioner)

Prayer: Criminal Revision Case has been filed under Sections 397 and 401 of Cr.P.C., aga

For Petitioner : Mrs.Chitra Sampath, Senior Counsel
for M/s.C.M.Krishnakumar

For Respondents : Mr.Sandeep S.Shah
for M/s.Samir S.Shah

ORDER

The instant criminal revision petition is preferred as against the order dated 09.02.2016 made in M.C.No.75 of 2012 on the file of the learned Principal Family Court at Chennai. The petitioner herein aggrieved over the order stated above passed under Section 125 of Cr.P.C. directing him to pay an amount of Rs.55,000/- as monthly maintenance towards the first respondent wife namely Aarti and the minor children Tarini and minor Shivani respondents 2 and 3 respectively, is before this Court by way of this Criminal Revision Petition.

2.The brief facts required for disposal of the instant Criminal Revision Petition is as following that the marriage between the revision petitioner and the first respondent was solemnized on 18.08.1996. Out of their wedlock they had begotten two female children the 2nd and 3rd respondents herein. Unfortunately their matrimonial life went miserable and out of the same a petition for dissolution of their marriage under Section 13(1) (ia) (ib) of the Hindu Marriage Act came to be filed by the 1st respondent in O.P.No.1189 of 2006 on the file of the learned Principal Family Court at Chennai. While so, the first respondent contending that she is unable to maintain herself and the minor children, came up with the above M.C.No.75 of 2012 under Section 125 of Cr.P.C. seeking an amount of Rs.60,000/- towards monthly maintenance to the respondents.

3.The first and foremost contention of the 1st respondent in the above maintenance petition is that the revision petitioner despite being financially sound but failed to maintain the respondents. The revision petitioner failed to lend financial assistance to the respondents. Therefore with no other go, the 1st respondent was forced to file the above maintenance case seeking an amount of Rs.60,000/- per month to the respondents jointly and Rs.15,000/- towards litigation charges.

4.The said petition was resisted by the revision petitioner opposing that the claim of the 1st respondent is liable to be rejected on the ground that she is a working woman drawing a salary of above Rs.35,000/- per month. The claim of the 1st respondent is vexatious, unreasonable and the same is liable to be rejected both on legal and factual grounds. The Learned Trial Judge dealing with the claim of the 1st respondent was pleased to order an amount of Rs.55,000/- as monthly maintenance from the date of the maintenance petition i.e. 28.01.2012 by his order dated 09.02.2016.

5.At the outset, on appraisal of the case records it is seen that the either parties to this petition have filed several interlocutory applications claiming for reliefs in one way or another. On bare perusal of the petition for maintenance under Section 125 of Cr.P.C. filed by the 1st respondent, this Court is able to see that in the petition it is focused that the revision petitioner to be a person of sound financial capacity, besides holding valuable assets. It is obvious to see the petition primly projects the financial capacity of the revision petitioner rather than describing the respondent s incapacity and inability to maintain her.

6.The record further reveal that the 1st respondent at the time of filing the maintenance case was employed in Jet Airways company receiving more than Rs.20,000/- as salary, even as per the averments made in para-18 of the maintenance petition. It is noticed that during the pendency of the maintenance case, the 1st respondent secured a job under Kothari Petro Chemicals Ltd., with salary of more than Rs.35,990/- p.m. To substantiate the same Exhibit-R7 marked, viz. copy of appointment order dated 02.09.2011 issued by the management of Kothari Petro Chemicals Ltd. Further, it appears that the 1st respondent was in employment under jet airways till 02.07.2011 and after a 3 month notice period she accommodated herself on 02.09.2011 under Kothari Petro Chemicals Ltd.

7.At this juncture it is seen that the 1st respondent has filed an application for interim maintenance in the divorce petition in I.A.No.1505 of 2006 seeking for interim maintenance. The Learned Trial

Judge on hearing upon the parties was pleased to order a sum of Rs. 10,000/- to the 1st respondent and Rs.3000 to the 2nd and 3rd respondents respectively, totaling a sum of Rs.13,000/- to be paid towards maintenance. Aggrieved over the same the 1st respondent filed a Civil Revision Petition Nos.2621 and 3541 of 2007 before this Court and the Revision found to be allowed partly by setting aside the maintenance amount of Rs.10,000/- per month granted to the wife, on the ground that the learned trial judge without considering the factum of requirements and financial ability of the wife, but considering the potentiality of the husband has made the order and thus unsustainable.

8.Accordingly interim maintenance of Rs.10,000/- per month for the 1st respondent was set aside by this Court and the matter was remanded back to the file of trial judge for fresh consideration. Subsequently the learned trial judge ordered an amount of Rs. 5,000/- as interim maintenance.

9.In the meantime, O.P.No.1189 of 2006 filed by the revision petitioner for divorce came to be allowed by the Learned Trial Judge vide an order dated 09.02.2016 and the marriage between the revision petitioner and the 1st respondent was dissolved on the ground of desertion.

10.Now the question arise before this Court is as to whether sufficiently earning wife is entitled for a monthly maintenance as a matter of right.

11.No doubt that the provision under Section 125 Cr.P.C. is a measure of social justice enabling the wife to claim for maintenance. The provision of maintenance of divorced wife is based on the foundation provided by explanation (b) to sub-section (1) of section 125 Cr.P.C., if she is unable to maintain herself and not remarried. The provision under Section 125(1) (b)(Explanation) of Criminal Procedure Code states as follows:

Explanation.-For the purposes of this Chapter,-

(b) wife includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

12.The learned counsel for the revision petitioner drew the attention of this Court to page No:183 of volume 1 of typed set of papers filed by the 1st respondent and cited the service certificate issued by the employer of the petitioner to the effect that he received salary only to an extent of Rs. 7000/- of gross salary at that point of time.

13.However, the 1st respondent despite earning more than the monthly salary of the revision petitioner, but with a view to harass the petitioner had sought a huge sum of Rs.55,000/- as monthly maintenance. The learned counsel for the revision petitioner submitted that the averments with regard to the financial status of the revision petitioner are exaggeratedly projected by the respondent by cock and bull story.

14.The revision petitioner in order to substantiate his claim that the 1st respondent is drawing a well earning and she is able to maintain herself has produced the pay slip of 1st respondent for the month of September 2016 issued by Kothari Sugars and Chemical Ltd. The same denotes the gross

salary of the 1st respondent as Rs. 56,846/- and after deductions and under various heads of Income Tax, P.F., loan and other deductions drawn take home salary of Rs.48,468/-.

15. Therefore, it is contented by the revision petitioner that the order of the learned trial judge directing the revision petitioner to pay a sum of Rs.55,000/- per month is unsustainable and erroneous.

Further reliance was made on the following decisions reported in Manokaran alias Ramamoorthy vs. M.Devaki reported in AIR 2003 MADRAS 212, Grant of maintenance to the wife working and earning more than her husband is improper and the same cannot be said that the wife was not having sufficient independent income.

16. The learned counsel for the petitioner also states that when the 1st respondent had deserted the petitioner, she is not entitled any maintenance as per Section 125(4) of Cr.P.C. The learned counsel for the petitioner also states that 1st respondent herself admit in the petition in M.C.No.75 of 2012 in para-10 as follows:

o. The first petitioner further submits that while this was the matter the 1st petitioner was deserted from the matrimonial house by the respondent on 1.5.2004 and ever since then the first petitioner along with the petitioners 2 and 3 are residing separately and from July 2004 they are residing in the above said rented premises.

17. The provision under Section 125(4) of Cr.P.C. as follows:

No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] 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.

18. To support his case he produced the following citations:

Smt. Rohtash Singh v. Ramendri (Smt.), reported in 2000 (2) R.C.R (Criminal) 286, it was held by the Hon'ble Supreme Court that a wife is not entitled to maintenance who has deserted her husband and left the society of the respondent on her own accord and both the Courts below were justified in declining the petition filed by the petitioner under Section 125 of the Code.

Poonam Vs Mahendra Kumar in Special Leave Petition in CRLMP.No(s). 18899 No alimony for women who deserted her husband.

19. Per Contra, the learned counsel for the respondents would submit that the revision petitioner being the husband is duty bound to maintain her and the children. Such duty is mandatory irrespective of the earning of the wife and as well claim of inability of the revision petitioner.

20. Moreover the income tax assessment certificate and the auditor certificate produced by the revision petitioner for about the last 10 years stating that the net taxable income of the revision petitioner was below the threshold taxable income limit of Rs.1,50,000/- do not have any barring upon the moral duty of the revision to maintain the respondents.

21. That apart the revision petitioner is a financially sound Zamindar owning very many valuable properties. Only on appreciation of such fact, the learned trial judge was pleased to order Rs.55,000/- towards monthly maintenance to the respondents.

22. The learned counsel for the respondents relied on the following citations and their relevant and reliance is stated hereunder in nutshell:

Rohtash vs Ramendri reported in 2000 (3) SCC 180 A Divorced wife who deserted her husband and on that basis a decree for divorce is passed against her is not a bar to claim maintenance a divorced wife.

Manava satyavadi vs Mannava Maleswara Rao reported in CDJ 2015 MHC 5809 - 1994 Law suit SC 19 wife and children left house on their own, even then they are entitled to maintenance.

Arul Selvi vs Satish kumar reported in CDJ 2015 MHC 6872 the husband has to prove his own income has fallen within his special knowledge u/s 106 of the Indian Evidence Act.

Bharath Hedge Vs Saroj Hedge reported in CDJ 2007 DHC 1466 income tax returns are not final proof with regard to income.

Chatur Ghuj vs Sita bai reported in CDJ 2007 SC 1276 Personal income of wife if insufficient she can claim maintenance. *CDJ 2013 MHC 1003 P.Kannan Vs K.Renuka* It is not open to husband that he has no sufficient means to maintain wife and children.

23. On appraisal of the case records this Court is completely displeased with the attitude and nature of the 1st respondent that it is patently visible her sole intention is to extort money in the guise of maintenance.

24. It is very odd to note from the calculation memo of expenses submitted by the 1st respondent before this Court which is highly exorbitant and the same is unbelievable.

25. For better appreciation the same is extracted hereunder:

MEMO OF EXPENSES INCURRED January to March 2012 Salary of the 1st Respondent- Rs.45,000.00 per month x 3 =Rs.1,35,000.00 Maintenance ordered by Trial Court- Rs.55000 x 3 = Rs.1,65,000.00 Rent - Rs.25,000 PM x 3 =Rs. 75,000.00 Electricity- Rs.1000 PM x 3 =Rs. 3000.00 Ration- Rs.15,000 PM x 3 =Rs.45,000.00 (Provisions) Daily Expenses- Rs.200 per day x 90 =Rs.18,000.00 Entertainment -Rs 5000 PM x 3 =Rs.15,000.00 Servant Salary- Rs.7500 PM x 3= Rs.22,500.00 Milk-Rs. 2,500 PM x 3= Rs.7,500.00 News Papers and other Magazines- Rs.750 PM x

3 =Rs.2,250.00 Conveyance Rs.7000 PM x 3 = Rs.21,000.00 Medicals Rs 4000 PM x 3= Rs.12,000.00 Clothes Rs.5000 PM x 3= Rs.15,000.00 Personal Expenses (1st Respondent) Rs.7,500 PM x 3 Rs.22,500.00 Personal Expenses 2nd & 3rd Respondents) Rs.7,500 PM x 3 Rs.22500.00 Shortage Rs.5000.00 Total Rs.3,05,000.00

26.It is quiet shocking and surprise for this Court on seeing the above Memo of expenses said to have been incurred for 3 months from January to March 2012. In my considered opinion, the above Memo discloses that the 1st respondent claims for an exorbitant amount of Rs. 1 Lakh per month as the expenses incurred.

27.The above calculation is self explanatory that the 1st respondent having admitted her salary at Rs.45,000/- per month projects as if the maintenance ordered by the trial Court at Rs.55,000/- per month is required, to tally their cost of living denoted in memo of expense filed by the 1st respondent amounting Rs. 1.1 Lakh. The above memo sufficiently discloses that the salary of the 1st respondent is Rs 45,000/- as of January 2012.

28.Therefore this Court is of the firm opinion that the 1st respondent is drawing a salary which is higher in quantum than that of the revision petitioner. In result this Court is not inclined both at the quantum and the order of maintenance to a working wife drawing a salary at a higher rate than that of the husband. The provision of maintenance provided under section 125 CrPC is neither penal nor compulsory, but is to be decided in the light of the financial capacity of the wife to maintain herself.

29.It is needless to say that the provision for maintenance is a social measure enabling a wife, whether divorced or not, to maintain herself, whereas it can never be used as a tool to harass the husband or a way of extortion of money, when the wife is employed and sufficiently deriving income more than the husband as in the case on hand.

30.In so far as the citations referred by the learned counsel for the 1st respondent, the same has no application in the present case, since in all the above cases the wife was not able to maintain herself and was unemployed, whereas herein the 1st respondent is duly employed and having sufficient means and source of income.

31.Admittedly in the case on hand even as per the version of the 1st respondent, she is deriving monthly salary of Rs.45,000/- as of 2012 and the same naturally will be increased at present.

32.Therefore, this Court finds that the order of the learned trial judge suffers infirmity both on legal and factual basis. It is also seen that the revision petitioner has deposited a sum of Rs.5 lakhs in the name of the respondents 2 and 3 in a fixed deposit and he has also deposited an another sum of Rs.2,70,000/- towards the respondents 2 and 3 and the said amounts are deriving interest.

33.By taking into consideration of the above said facts, this Court deems fit to direct the revision petitioner to pay a sum of Rs.10,000/- towards monthly maintenance to the 2nd and 3rd respondents each, totaling a sum of Rs.20,000/- per month. However, in so far as the order of maintenance towards the 1st respondent is concerned, the same is set aside, as the 1st respondent

admits herself to be drawing a salary of Rs.45,000/- per month and it is also established by the revision petitioner that the 1st respondent possesses sufficient means and source of income to maintain herself.

34. Before parting with the case, this Court expresses its deep concern that though the legislation for maintenance is a valuable and beneficial legislation safeguarding hapless and helpless wife, who is unable to maintain herself, but there are some instances in which as in the case on hand the wife focuses her husband as like that of an automated teller machine and the beneficial provisions of law is managed to be utilized as a tool of harassment.

35. In the result, this Criminal Revision is partly allowed with the following directions:

(a) the revision petitioner shall pay a sum of R.10,000/- towards monthly maintenance to the respondents 2 and 3 each, totaling a sum of Rs.20,000/- per month from the date of filing of M.C.No.75 of 2012;

(b) the order of maintenance towards the 1st respondent stands rejected in view of the factum that the 1st respondent possesses sufficient means and source of income to maintain herself. No costs.

22.06.2018 vs Index: Yes Internet : Yes Speaking order To The Principal Family Court, Chennai.

M.V.MURALIDARAN.J, vs Pre-delivery order made in Crl.R.C.No.1015 of 2016 22.06.2018