

Chandrasekar Vs. Eswari

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Court : Chennai Madurai

Decided On : Jan-04-2016

Judge : M. Venugopal

Appeal No. : Crl.RC.(MD).No. 250 of 2014

Appellant : Chandrasekar

Respondent : Eswari

Judgement :

(Prayer: Criminal Revision filed under Section 397 r/w 401 of Cr PC challenging the order passed by the Learned Chief Judicial Magistrate, Dindigul in M.C.No.2 of 2012 dated 17.02.2014.)

1. The Revision Petitioner/Respondent has focussed the instant Criminal Revision Petition as against the order dated 17.02.2014 in M.C.No.2 of 2012 passed by the Learned Chief Judicial Magistrate, Dindigul.

2. The Learned Chief Judicial Magistrate, Dindigul, while passing the impugned order, on 17.02.2014 in M.C.No.2 of 2012, at paragraph No.13, had inter alia observed that the "... Respondent (Husband) has not proved the complaint of adultery between the petitioner/wife and one Mr.Suresh before this Court" and hence, negatived the contention of the Revision Petitioner/Husband in this regard. Further, the trial Court, has awarded a sum of Rs.3,000/- per month to the respondent/Husband as maintenance to be paid by the Revision

Petitioner/Husband from the date of filing of M.C.No.2 of 2012 viz., 04.01.2012 onwards until further orders. Moreover, the Revision Petitioner/Husband was directed to pay the said maintenance amount on or before 5th every English Calender month and was also directed to pay the arrears of maintenance amount within one month from the date of the order.

3. Challenging the impugned order dated 17.02.2014 in M.C.No.2 of 2012, passed by the Learned Chief Judicial Magistrate, Dindigul, the Revision Petitioner/Husband has preferred the present Criminal Revision Petition before this Court (as an aggrieved person), primarily contending that the trial Court had failed to take into account of a very vital fact that the Respondent/wife had not established her case in the manner known to Law.

4. Added further, it is represented on behalf of the Revision Petitioner that the trial court had failed to take into consideration the evidence of R.Ws.1 to 6 in a proper and real perspective.

5. The Learned counsel for the Revision Petitioner/Husband projects an argument that the ingredients of Section 125 of Cr.P.C prohibits the Respondent/wife from claiming maintenance from the Revision Petitioner/Husband, when she is leading a life of adultery with one Suresh.

6. Advancing his arguments, the Learned counsel for the Revision Petitioner/Husband submits that the trial court had not given due weightage to P.W.1's evidence.

7. Continuing further, it is the plea of the Revision Petitioner/Husband that the respondent/wife had not established his 'means' and as such, the impugned order passed by the trial court is clearly unsustainable in the eye of Law.

8. Yet another stand taken on behalf of the Revision Petitioner/Husband is that the Revision Petitioner/Husband had not withdrawn his complaint and that the Inspector of Police, Sanarpatti Police Station and the respondent/wife colluded together and obtained the signatures of the Petitioner/Husband.

9. Besides the above, the Learned counsel for the Revision Petitioner/Husband contends that the trial court had failed to appreciate Ex.R.7, the order dated 07.01.2014 of this Court passed in Crl.O.P. (MD).No.15839 of 2013, in and by which, this Court has transferred the investigation to the Superintendent of Police, Dindigul and the investigation is pending.

10. The Learned counsel for the Revision Petitioner submits that the trial court had failed to consider the order passed by this Court in Crl.O.P.(MD).No.5092 of 2013, wherein, a direction was issued to register an FIR. If that being so, the question of withdrawing the complaint by the petitioner would not arise.

11. At this stage, it is to be pointed out that the Respondent/wife, as petitioner in M.C.No.2 of 2012, on the file of the Learned Chief Judicial Magistrate, Dindigul filed under Section 125 of Cr.P.C, had claimed a sum of Rs.10,000/- towards monthly maintenance from the Respondent/Husband (Revision Petitioner).

12. According to the Respondent/wife, for a period of one year, she and the Revision Petitioner/Husband liked each other and that they expressed their desire to their parents about their marriage, at that time, their parents had not consented for the same and that with the consent of the Revision Petitioner/Husband's parents, on 23.06.2010 (Wednesday) at Papinaickenpatti Village Shandy, near Gujiliamparai, Vedasanthur Taluk, according to the Revision Petitioner/Husband's caste, custom, the marriage took place. At the time of marriage, she was wearing three sovereigns of gold chain, two ear steads and two anklets and that she lived happily in the residence of the Revision Petitioner/Husband for eight months.

13. Further, in M.C.No.2 of 2012, the respondent/wife had averred that the Revision Petitioner/Husband took her jewels for the purpose of purchasing a two wheeler by pledging, for which, she refused and because of that, the Revision Petitioner/Husband often scolded her, beat her and demanded her jewels by consuming liquor and harassed her. Unable to bear the nuisance/harassment of the Revision Petitioner/Husband, she had removed her jewels and gave it to the Revision Petitioner/Husband. From that date onwards, there were differences of opinion between herself and her husband on account of trivial issues.

14. The Respondent/wife in M.C.No.2 of 2012 on the file of the trial court had proceeded to make a mention that on 16.07.2011, (Saturday), she and her husband (Revision Petitioner) were in the house and at that time, an oral quarrel took place between her mother-in-law and herself with regard to the domestic work and at that time, her husband's (Revision Petitioner's) brothers, her mother-in-law had joined together, on seeing the Revision Petitioner/ Husband, stated that his wife had not brought any jewels as dowry, drove her away to her father's house and that she was to bring 10 sovereigns of jewels and a cash of Rs.50,000/- and the Revision Petitioner/Husband joined with them and gave a powerful blow on her cheek and threatened that he would murder her, if she had not brought the dowry amount and drove her outside of the house.

15. Further, it transpires from the averments made in M.C.No.2 of 2012 that the Respondent/wife had stated that she complained to one Madavan (an important person in the village) and sought justice and for which, the important persons of the aforesaid village, heeded to the words of the Revision Petitioner/Husband and his family members and had not meted out justice to her and in fact, they ignored her words. Since she had not secured justice in village panchayat, she filed a complaint on 27.09.2011 against the Revision Petitioner/Husband before the North Madurai All Women Police Station and she was given a receipt for her complaint. Based on her complaint, the Sub Inspector of Police conducted an inquiry as against the Revision Petitioner/Husband and his family members on 13.11.2011, registered an FIR under Sections 498(A) and 506(ii) of Indian Penal Code and Section 4 of Tamil Nadu Prevention of Harassment of Women Act and Section 4 of Dowry Prohibition Act and the same was pending.

16. It is the stand of the Respondent/wife that the Revision Petitioner/Husband is owning more than 5 acres of agricultural lands valid about Rs.50,00,000/- and also her husband is in possession of well-over of Rs.10,00,000/- on his hands and also engaged in 'Finance business'. From the above agricultural lands and the finance occupation, he is getting a monthly income of over Rs.1,00,000/-. Moreover, her husband, without any reason had neglected her and as a result of which, she is leading a difficult life. The efforts taken by her to live with the Revision Petitioner/Husband had proved futile and till date, she is living separately from her

husband. As such, she claimed a monthly maintenance of Rs. 10,000/- to be paid by the Revision Petitioner/Husband.

17. The Revision Petitioner/Husband in his counter affidavit to M.C.No.2 of 2012 on the file of the trial court had admitted the factum of marriage with the Respondent/wife that took place on 23.06.2010 at Gujiliamparai. But, denied that the marriage was performed with the consent of his parents. Further, he had mentioned that it was false to state that during the time of marriage, the Respondent/wife was given 3 sovereigns of gold jewels and also two silver anklets etc., He also denied the alleged verbal quarrel that took place on 16.07.2011 etc., Further, he had denied that he is having 5 acres of land, which would fetch Rs.50,00,000/- and he is in possession of Rs.10,00,000/- on his hands and doing money lending business and earning Rs.1,00,000/- per month. According to him, he is not in possession of agricultural lands of his own and in reality, he is working with his father, who owns the said agricultural lands.

18. The Revision Petitioner/Husband in his counter to M.C.No.No.2 of 2012 had also stated that he was eager to know about the reason for the separation of his wife/Respondent and at last, he came to know that she was having an illicit intimacy with one Suresh, S/o.Selvaraj and his wife and the said Suresh were caught red-handed by him on 17.09.2011, when they were in pond bushes. With the help of his father, his wife (the respondent) and the said Suresh were produced before the village panchayat and the village people insisted him to prefer a complaint and handed over them to the police. As per the direction of the village people, his wife and the said Suresh were handed over to the Sanarpatti Police and a complaint was given by him against the said two persons on the same day itself and the police gave a complaint receipt on 21.09.2010. When he was planning to obtain divorce from Respondent/wife on the basis of her adultery with one Suresh, she immediately gave a false complaint before the Vadamadurai All Women Police Station stating as if she was driven away from his house for the demand of dowry etc., After proper enquiry, the police has also warned her and later, he filed H.M.O.P.No.7 of 2012 on the file of the Learned Principal Sub-Court, Dindigul, seeking divorce from his wife on the ground of adultery.

19. In short, the Revision Petitioner/Husband had taken a plea in his counter in M.C.No.2 of 2012 on the file of the trial court that his wife (Respondent) was living in adultery and therefore, he is not liable to pay any maintenance and further on that ground, she is not entitled to get any sum as maintenance.

20. It is to be borne in mind that after marriage, it is the solemn duty of the husband to provide shelter and maintenance to his wife, if he neglects his wife, then, she is entitled to seek the relief of maintenance from a Court of Law by filing a necessary petition in accordance with Law. It is true that the proceedings under Section 125 of Cr.P.C is summary in nature. The section in fact provides a simple and an effective remedy. Of-course, the proceedings for maintenance under Section 125 of Cr.P.C are in the character of civil proceedings, although the criminal process is applied for the purpose of summary and quick disposal of the matter in issue in society's interest. An order passed under Section 125 of Cr.P.C is tentative in character and is subject to the final determination of rights in civil court.

21. It is to be remembered that in the proceedings under Section 125 of Cr.P.C, the Magistrate cannot determine the validity of marriage between the parties. An order under Section 125 of Cr.P.C can be passed, only if a person of possessing 'sufficient means' neglects to maintain his wife and the child. In-deed, 'means' of the husband does not mean the tangible property or his sources of income, but also his capacity, potentiality and status, as opined by this Court. In fact, the maintenance is to be decided in the context of standard of living of the person concerned, the earnings of the husband and if other financial commitments etc., The husband cannot refuse to maintain his wife on the basis that he has no sufficient means. Of course, the capacity of the husband to pay must be established to determine the quantum of maintenance, as per the decision Md.Manzoor V. Najma Khatoon reported in 1987(2) Crimes Pg 539 at page 541 (Patna). If a person is healthy, able-bodied, he must be presumed to be possessed of requisite source/means to maintain his wife, child and parents and the word 'means' does not signify like 'Estate' or certain employment but also includes capacity to earn money. It is for a person/Husband to show that he is not capable of earning anything because of ill health etc., The word 'neglect or refusal'

may mean something more than mere failure or omission; neglect or refusal to maintain may be by conduct or by words. It may be by expressed or by implied manner. The right of a wife to maintenance is an incidence of her status. The term 'refuse' means a failure to maintain or a denial of obligation to maintain, after demand, 'neglect' on the other hand, means a failure or omission, in the absence of a demand.

22. For a fuller and better appreciation of the respective contentions, in the subject matter in issue, it is useful for this Court to refer to the evidence of P.W.1 and R.Ws.1 to 6.

23. It is the evidence of P.W.1 (Respondent/wife) that in H.M.O.P.No.7 of 2012, pending on the file of Principal Sub-Court, Dindigul, she and Suresh were added as parties. Further, she had deposed (in her cross-examination) that based on the contents of complaint, the North Madurai Police had filed an F.I.R etc., Moreover, she had deposed that she does not know the seizure of cell-phone on 17.09.2011 and the same being handing over to panchayatdars.

24. R.W.1, in his proof affidavit (before the trial court) had averred that since his wife had lodged a false complaint against himself, his family members before the North Madurai All Women Police Station, the Inspector of Police enquired the said complaint, he handed over the cellphone of Suresh and that he rejected the complaint filed by his wife, since he found truth on his side and that the false complaint given by his wife is pending on the file of the Learned Judicial Magistrate No.3, Dindigul in C.C.No.43 of 2012.

25. It is the evidence of R.W.2 (Sub-Inspector of Police) that presently, he was serving as Sub-Inspector of Police of Sanarpatti Police Station. The complaint dated 29.11.2011, given by the Revision Petitioner/Husband was taken up for inquiry on the same day in CSR.No. 549 of 2011 and Ex.C.1 is the enquiry file (containing 10 pages) and further, there were no indications in the records of the police station that the Revision petitioner/Husband gave a complaint on 02.11.2012.

26. R.W.3, in his evidence (in cross-examination) had deposed that when the Revision Petitioner/Husband went to the police station for lodging a complaint, he had not accompanied him and further that till 30.12.2013, he was not enquired by the Police in connection with the problem of the Revision Petitioner/Husband.

27. R.W.4, in his proof affidavit had inter alia stated that on 17.09.2011, for drinking tea, at 11.30 a.m, he proceeded from his house to Viralipatti in his two wheeler vehicle and at that time, in the village, the Revision Petitioner/Husband, respondent/wife and another youngster were surrounded out by village people and when he enquired with the Revision Petitioner/Husband, he informed by saying that his wife and the said Suresh were in illicit intimacy and when they were in the bush, he caught them red-handed and later, the villagers sent Mr.Suresh, who belong to different community to the Sanarpatti Police Station and that he was not examined by the police till date.

28. Like-wise, R.Ws.5 and 6 had averred in their proof affidavit similar to that of R.W.4 and hence, they are not repeated.

29. It is to be pertinently pointed out that the allegation/ground of adultery must be proved to the subjective satisfaction of the concerned Court, since the same is a matrimonial offence. There is always the presumption of innocence and it is for the Petitioner concerned to establish the allegations relied upon by him. The Respondent, on the other hand, bears the burden of proving affirmative defences set up in this regard. As a matter of fact, direct proof of 'Adultery' is not imperative. The accepted rule, in this regard, is that circumstantial evidence is all that can normally be expected in proof of the allegation/charge. But the circumstances must be such as to lead to fair inference, as a necessary logical conclusion, as opined by this Court. In short, circumstances must be such as would lead guarded judgment of a reasonable and just man to arrive at a conclusion that a spouse is not entitled to a decree/order on the allegations arising out of suspicion created by attendant surrounding circumstances, for such allegations are to be proved. Suspicion is not sufficient to avail a remedy for 'Adultery'.

30. Furthermore, the onus required to prove adultery need not necessarily be what is at times 'said to be proof beyond a shadow of doubt'. It need not reach certainty,

however at times carry a high degree of probability, as per decision Miller V. Minister of Pensions (1947) 2 All ER Page 372 at special page 373. It is to be noted that a Court of Law does not as a general rule infer adultery from evidences of opportunity alone, but would require some more satisfactory proof. Something more than opportunity and evidence of inclination or passion is generally required. Since adultery is a grave allegation, it must be examined on the same basis like that of a criminal charge. Also, it is said at times that it is a quasi-criminal offence and must be established as such.

31. As far as the present case is concerned, even though the Revision Petitioner/Husband has levelled an allegation of adultery against the Respondent/wife with one Suresh, the petitioner/Husband had failed to establish the same.

32. Dealing with the aspect of the claim of monthly maintenance, a sum of Rs.10,000/- sought for by the respondent/wife from the Revision Petitioner/Husband, it is to be pointed out that the respondent/wife had not proved with sufficient, acceptable and documentary evidence that the Revision Petitioner/Husband is possessing properties worth Rs.5 lakhs and he was in possession of Rs.10 lakhs cash on hand and also doing money lending business and earning Rs.10,000/- per month. Even in the absence of necessary proof, as stated already, after marriage, it is the duty of the Revision Petitioner/Husband to provide shelter and maintenance to the respondent/wife. Since the Revision Petitioner/Husband had not provided the essential amenities to the respondent/wife, this Court, considering the plight of the Respondent/wife, her status, her condition of living, spiralling rise in prices of essential commodities, inflation etc., holds that the Respondent/wife is entitled to receive monthly maintenance amount from the Revision Petitioner/Husband and in this regard, the trial Court's finding that the Revision Petitioner/Husband is to pay a sum of Rs.3,000/- per month towards maintenance to the respondent/wife cannot be found fault with and the said order is a flawless one, in the considered opinion of this Court. Looking at from this angle, the Criminal Revision Petition is devoid of merits.

33. In fine, the Criminal Revision Petition is dismissed. Consequently, the order dated 17.02.2014 passed by the Learned Chief Judicial Magistrate, Dindigul in M.C.No.2 of 2012 is affirmed by this Court for the reasons assigned in this Revision. Consequently, connected M.P.(MD).No.1 of 2015 is also dismissed.

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