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Court : Chennai Madurai

Decided On : Oct-15-2015

Judge : The Honourable Mrs. Justice S. Vimala

Appeal No. : Crl.R.C.(MD)No. 301 of 2015

Appellant : Gomathi and Another

Respondent : P. Raja

Advocate for Def. : Shri. Rege

Judgement :

(Prayer: Criminal Revision Petition is filed under Sections 397 r/w 401 of the Criminal Procedure Code to set aside the order made in M.C.No.16 of 2014 on the file of the learned Judicial Magistrate, Nilakottai dated 30.04.2015 as illegal and allow the revision petition insofar as the 1st petitioner is concerned and 2nd petitioner is concerned, maintenance amount may be enhanced.)

The wife can go to any employment and earn money and she can maintain herself and therefore, she is not eligible to claim any maintenance ?, so saying the Judicial Magistrate, Nilakottai dismissed the petition of wife, though ordering maintenance of minor son at Rs.3,000/- per month. This order is under challenge in this revision petition.

2. Facts: The wife and the son of the respondent herein are the revision petitioners. The marriage between the 1st petitioner and the respondent took place on 08.11.2010 and out of wedlock the 2nd respondent was born on 29.08.2011. The respondent had to frequently visit foreign countries. At the instigation of the parents and sisters, the respondent treated the 1st petitioner with cruelty and finally had driven her on 01.05.2014 to her parents' house. Pleading for reunion, she gave a petition to Nilakottai Women Police Station on 29..2014. On appearance, the respondent agreed to set a separate house and assured to take back the wife.

2.1. Thereafter, the husband filed a petition for divorce in HMOP 54 of 2013. The wife is contesting the same. The 1st petitioner takes persistent efforts to live with the respondent, but it went in vain. The respondent is pressurizing the 1st petitioner to give divorce by adopting illegal methods.

2.2. On 27.05.2014, the respondent, his parents and sisters abused the 1st petitioner's mother and also had beaten her and in respect of the same a criminal case is pending in Crime NO.8/2014 of Nilakottai All Women Police Station. Thus, the respondent willfully neglected and refused to maintain the petitioners.

3. At the time when the respondent was employed abroad, he was earning Rs.70,000/- per month. The jewels belonging to the 1st petitioner has been mortgaged and the amount is kept in Bank deposit. The respondent is the owner of the house worth about 20 lakhs.

4. The claim for maintenance was disputed on the ground that it is only the petitioner who was not behaving properly with the parents of the respondent. She was having frequent interactions with his uncle's son Raju through cellphone. When this was questioned, she left the house. The 1st petitioner is the M.Com graduate. But the respondent is a Diploma Holder having diploma in Diesel Mechanic. Therefore, the 1st petitioner was having ego and she felt happy in treating the respondent badly. As she refused to live with the husband, husband filed a petition for divorce. Even after the respondent setting up a separate house, she refused to live with the respondent.

5. The respondent was arrested and his passport was impounded and therefore, the husband has lost the employment and he is struggling to meet his livelihood. The intention to file maintenance is to cause harassment to her husband.

6. The learned Magistrate, while considering the reasons stated by the wife for leaving the company of the husband, has considered the circumstances and has found that the allegation of mortgage of the jewels of the wife is true. After the marriage, a property has been purchased in the name of the father-in-law. Therefore, the probability is that the money obtained by mortgaging the jewels could have been used for the purchase of the property. One more serious allegation against the wife is that she was maintaining relationship with his uncle's son Raju. This allegation has also been falsified by the evidence of R.W.2, wherein he has admitted that after the respondent leaving abroad, the uncle's son came only twice and he was talking with the 1st petitioner only for a period of 10 minutes for each occasion. Therefore, this contention has also been falsified. Under such circumstances, it is proved that the wife has got justifiable reason to live away from the company of the husband.

7. The wife has admitted that while she was residing abroad along with her husband, leaving the child in a Child Centre, she went for job and earned Rs.30,000/- per month. She has also admitted that she had been employed at Madurai Meenakshi Mission Hospital prior to the marriage and that she was earning. Based on these admissions, the Court below came to the conclusion that she has the potential capacity to earn money and therefore, she must be in a position to maintain herself and therefore, the husband need not pay maintenance to the wife.

8. Whether this finding is justified, is the issue to be considered in this case.

9. Undoubtedly, the wife is an M.Com B.Ed. Graduate, having chosen the option of going for the job prior to the marriage. In between, i.e. prior to and after the marriage, the difference in status is on account of attainment of motherhood by the 1st petitioner. Nurturing 4 year old child is now the exclusive responsibility of the mother.

10. Though the motherhood is most beautiful experience that a woman can have in her life, still, it is made the most stressful on account of the neglect and refusal on the part of the husband. The women have to perform multiple roles, such as taking care of the spouse, children, business, education, health etc. A woman is always the foundation on which a home is built upon. The mother should ensure safe and secured environment for the children to grow and flourish and also to develop the creativity, morality, knowledge and personality and to ensure the blossoming of the child into a responsible and useful citizen of the country.

11. At least, upto the growth of the child, certain age, the preferred option for the woman is towards parenting than being employed. In other words, women prefer growth of the family than individual growth. Even otherwise, whether the finding of the Magistrate that wife having potentia ability to earn money whether can be deprived of maintenance and whether the law permits it is the more question.

12. The object of maintenance proceeding is not to punish a person for his past neglect, but to compel him to provide and to support those who are unable to support themselves in the marital relationship. What is the meaning of the expression unable to maintain ??.

13. The Courts have interpreted the expression unable to maintain ?, as connoting that the wife has no other means or source to maintain herself and that it has nothing to do with the potential earning capacity.

14. In the case of Rajatha vs. Ganga, reported in AIR 1999 SC 2374, it has been held that the statement of the wife that she is unable to maintain herself is enough and it would be for the husband to prove otherwise.

15. The expression ability to maintain herself cannot be equated to the expression capable of earning ?. This interpretation is supported by the following decisions:

i) Rajatha vs. Gangha, AIR 1999 SC 2374

7....Statement of the wife that she is unable to maintain herself is enough and it would be for the husband to prove otherwise. ?

ii) Major Ashok Kumar Singh vs. VIth Additional Sessions Judge, Varanasi and others, 1991 Cri.L.J.2357;

12....It is not disputed that respondent No. 3 is not employed anywhere and has no other means to maintain herself, merely for the fact that a woman is educated, she cannot be deprived of her right to get maintenance under Section 125 of the Code of Criminal Procedure.

iii) Vimal vs. Sukumar, 1981 Cri.L.J.210;

.....It is no doubt true that the expression used by the legislature is in the negative form i.e. "unable to maintain herself", but if this expression is converted into positive form. It only means that, 'she is otherwise able to maintain herself', or has got income earning property or other means to support herself. The expression "unable to maintain" only connotes that the wife has no other means or source to maintain herself. It has nothing to do with her potential earning capacity. If the interpretation suggested by Shri Rege is accepted then the whole provision will become unworkable and will result in defeating the very object of the legislature. It will involve roving and endless enquiry about her physical ability, capacity as well as avenues and opportunities available to her for earning her livelihood. It is obvious that this was never intended by the legislature. In the case before me, it is nobody's case that the petitioner-wife was ever earning anything on her own. It is also not the case of respondent-husband that with a mala fide intention of harassing him, the petitioner-wife has created an artificial necessity by leaving a job or by disposing of her property. Therefore it is not possible for me to accept the contention raised by Shri Rege the learned Counsel appearing for the respondent-husband. ?

16. In view of the above propositions, this Court is of the view that the wife is entitled to maintenance even though she is educationally qualified. In the absence of proof to show that she is gainfully employed or in the absence of proof to show that she is deriving income from any other source, in the absence of evidence to show that growth and nurture of the child is taken care of by the husband or on his behalf by somebody else, the contention that the wife can go for employment and earn money, cannot be accepted.

17. It would be appropriate to quote Hon'ble Justice V.R.Krishna Iyer, speaking about the disparity in the opportunity and responsibility for the woman, where the opportunities were less and the responsibilities are more and it is extracted here for reference:

The United Nations is committed to the principle of equality of men and women, meaning equality in their dignity and worth as human beings as well as equality in their rights, opportunities and responsibilities. In its work for the advancement of women, the entire United Nations system has dedicated itself to ensuring the universal recognition, in law, of equality of rights between men and women, and to exploring ways to given women, in fact, equal opportunities with men to realize their human rights and fundamental freedoms. ?

18. If there is appreciable improvement in the financial status of woman, including equality of opportunity and responsibility (especially in the domestic work), then it is for the legislature to consider the changes in the provision. Till such time, the law as it stands today did not permit this Court to hold that just because wife is educated, she can be deprived of maintenance.

19. The wife has claimed a sum of Rs.10,000/- as maintenance. No doubt, originally the husband was earning 300 Dinar equivalent to Rs.50,000/- at the relevant point of time. Now, the evidence reveals that he has lost his employment abroad and it is claimed that he is not in any job and not earning money. Comparing the position of both, the wife has the liability to maintain the child, whereas no such predicament is faced by the husband, so far as the physical custody is concerned. Under such circumstances, when it is the liability of the husband to maintain, it is for him to secure a job and to maintain the wife and the child. Even though she has claimed a sum of Rs.10,000/-, in the absence of the proof to show that the husband is earning to that extent, the amount of Rs.10,000/- cannot be awarded, especially when there is an order directing the husband to pay Rs.3000/- to the minor son. It would be appropriate to direct the husband to pay maintenance at Rs.5,000/- per month to the wife.

20. It is open to the wife to file necessary application for enhancement, whenever evidence is available to show that the husband is gainfully employed.

21. In the result, this Criminal Revision Petition is allowed and the order passed by the learned Magistrate dismissing the claim of maintenance is hereby set aside. Maintenance is allowed at Rs.5,000/- per month to the wife payable from the date of order of the Lower Court, i.e. 30.04.2014.

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