

S.Pavunraj Vs. Vanaroja

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Court : Chennai

Decided On : Feb-11-2015

Judge : M.Sathyannarayanan.

Appellant : S.Pavunraj

Respondent : Vanaroja

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

11. 02.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN. CrI.R.C(MD)No.48 of 2015 and M.P.(MD)No.1 of 2015 S.Pavunraj ... Petitioner Vs Vanaroja ... Respondent Prayer: Civil Revision Case filed under Section 397 read with 401 of the Code of Criminal Procedure, to call for the records of the learned District Munsif-cum Judicial Magistrate, Papanasam in M.C.No.5 of 2012 and set aside the order dated 19.04.2013. !For Petitioner : Mr.Rajaprabu ^For Respondent : Mr.N.Sivasubramanian :

ORDER

This revision has been filed praying to set aside the order passed in M.C.No.5 of 2012, dated 19.04.2013, by the learned District Munsif-cum Judicial Magistrate, Papanasam 2. By consent, the Revision itself is taken up for final disposal.

3. The revision petitioner is the respondent in M.C.No.5 of 2012 on the file of Court of District Munsif-cum-Judicial Magistrate, Papanasam. The respondent herein

has filed the above said petition under Section 125(a) of Cr.P.C., claiming maintenance, for her and three children, at the rate of Rs.10,000/- per month; a sum of Rs.1,50,000/- per year towards education, medical and festival expenses and a sum of Rs.3,000/- per month towards rent. The said case, after contest was ordered on 19.04.2013 by directing the revision petitioner herein to pay a sum of Rs.2,000/- to his wife, towards maintenance; a sum of Rs.1000/- each to two minor children; a sum of Rs.10,000/- for meeting out the educational expenses of two children and a sum of Rs.15,000/- for meeting out medical and festival expenses and in all a total sum of Rs.35,000/-, to the respondent in the said maintenance case. Aggrieved by the said order, the revision petitioner has filed this revision.

4. The learned counsel for the petitioner would submit that though the petitioner is Government servant, employed as Health Inspector in the services of Government of Tamil Nadu and he is a HIV Positive patient and in any event, the award of Rs.10,000/- per year to meet out the educational expenses of his two minor children and a sum of Rs.15,000/- per year, for meeting out the education and festival advance are very much on the higher side and the trial Court while awarding such an exorbitant sum of maintenance has failed to take into account the capacity of the revision petitioner, as he is a HIV Positive patient and therefore, prays for appropriate order.

5. Per contra, the learned counsel appearing for the respondent would submit that the marriage between the respondent and the revision petitioner was solemnized on 03.04.1991 and out of wedlock, a girl child was born on 22.06.1992 and a boy child was born on 15.02.1995 and again a boy child was born on 26.01.1998 and without any justification whatsoever, she was driven out of matrimonial home from 2006 and from that year, she is maintaining her three children. Though the revision petitioner is a Government servant, he is not taken any care to maintain them and therefore, the quantum of maintenance awarded by the trial Court is perfectly in order and prayed for dismissal of this revision.

6. This Court has carefully considered of rival submissions and also perused the typed set of papers as well as the impugned order.

7. Admittedly, the revision petitioner is employed as Health Inspector in the services of Government of Tamil Nadu and according to the respondent, his monthly salary, at the time of filing maintenance case in the year 2012, was Rs.29,120/-. It is further averred by the respondent that she has also filed HMOP.No.80 of 2006 on the file of Sub Court, Kumbakonam for restitution of conjugal rights and it was ordered ex-parte and the revision petitioner did not take any steps to set aside the ex-parte order of conjugal rights, he has not taken back them, the result being she along with three children are continue to suffer and pursuant to the difficulties and hardship she is taking care of her 3 children and the girl child also attained the age of majority.

8. Though the revision petitioner is suffering and declared as HIV Positive patient, the fact remains that he is not disputing the marriage and parentage of three children and only points urged by the learned counsel appearing for the revision petitioner are that the award of a sum of Rs.1000/- per month towards rent is unsustainbale for the reason that the respondent is residing in the own premises and the lump sum of Rs.10,000/- per year awarded to two children towards educational expenses and a sum of Rs,15,000/- awarded by the towards medical and festival expenses are unsustainable.

9. This Court can take judicial notice of the fact that cost of living is increasing day-by-day on account of inflationary trend and though the respondent has got the favourable order for restitution of conjugal rights, the revision petitioner did not chose to join with her company and admittedly, the respondent is maintaining her three children and also educating them. It is the submission of the learned counsel appearing for the revision petitioner that since the respondent is residing in the own premises, she is not entitled to a sum of Rs.1000/- per month towards rent and in response to the same, the learned counsel appearing for the respondent would contend that the said property was mortgaged to the Bank by the revision petitioner and recovery action is also taken. But the fact remains that the respondent is residing in the own premises and therefore, a sum of Rs.1000/- awarded by way of monthly rent is unsustainable. In so far as a sum of Rs.10,000/- per year awarded to two children for meeting out educational expenses, this Court is of the view that being a parent, the revision petitioner is

also bound to maintain and educate the children so that they can come up in their life. Therefore, the said sum of Rs.10,000/- awarded per year cannot be said to be improper. Insofar as the award of a sum of Rs.15,000/- per year for meeting out the medical and festival expenses for the respondent and her three children are concerned, this Court is of the view that it could be reduced to Rs.10,000/- per year. The award at the rate of Rs.2,000/- per month to two minor children in the considered opinion of this Court cannot be said to exorbitant 10. In the result, the revision petition is partly allowed and the impugned order dated 19.04.2013 is modified to the effect that the respondent is not entitled to a sum of Rs.1000/- per month towards rent, and the medical and festival expenditure of a sum of Rs.15,000/- per year is reduced to a sum of Rs.10,000/- per year and in all other respect, the award of maintenance passed by the trial Court is confirmed. Consequently, connected miscellaneous petition is closed. 11.02.2015 Index : Yes / No Internet : Yes / No MPK To 1.The District Munsif-cum Judicial Magistrate, Papanasam 2.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. M.SATHYANARAYANAN, J.

MPK CrI.R.C(MD)No.48 of 2015 11.02.2015

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