

Rajesh Kumar and Others Vs. Jayasree S and Another

Rajesh Kumar and Others Vs. Jayasree S and Another

SooperKanoon Citation : sooperkanoon.com/59938

Court : Kerala

Decided On : Jun-11-2015

Judge : Honourable Mr.Justice K.Harilal

Appellant : Rajesh Kumar and Others

Respondent : Jayasree S and Another

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR.JUSTICE K.HARILAL THURSDAY, THE 11TH DAY OF
JUNE 2015 21ST JYAISHTA, 1937 Crl.Rev.Pet.No. 1902 of 2011
----- AGAINST THE

JUDGMENT

IN CRL.A.NO. 4/2011 of ADDITIONAL SESSIONS COURT-I, MAVELIKKARA
DATED 06/07-2011. AGAINST THE

ORDER

IN MC92010 of J.M.F.C.-I, HARIPAD DATED 04/12-2010. REVISION
PETITIONER(S)/APPELLANTS/RESPONDENTS:

----- 1. RAJESH KUMAR, AGED 36 YEARS, S/O.
MOHANAN, MARTHANDAN CHIRAYIL HOUSE, MUTHUKULAM SOUTH MURI,
MUTHUKULAM, ALAPPUZHA DISTRICT.

2. MOHANAN, AGED55YEARS, S/O. KOCHU PAPPU, MARTHANDAN CHIRAYIL HOUSE, MUTHUKULAM SOUTH MURI, MUTHUKULAM, ALAPPUZHA DISTRICT.

3. SURABHI, AGED54YEARS, W/O. MOHANAN, MARTHANDAN CHIRAYIL HOUSE, MUTHUKULAM SOUTH MURI, MUTHUKULAM, ALAPPUZHA DISTRICT. BY ADV. SRI.C.A.CHACKO

RESPONDENT(S)/RESPONDENTS/PETITIONER: ----- 1. JAYASREE.S., AGED34YEARS, D/O. BHARATHAN, SREE VENKITESWARA NILAYAM, PATTOLIMARKET.P.O., KARTHIKAPPALLY, ALAPPUZHA DISTRICT-690531.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R1 BY ADV. SRI.K.B.ARUNKUMAR R2 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON1106-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. HARILAL, J.

----- Crl.R.P. No.1902 of 2011
----- Dated this the 11th day of June, 2015

ORDER

The revision petitioners are the respondents in M.C. No.9 of 2010 on the files of the Judicial First Class Magistrate's Court-I, Haripad, as well as the appellants in Crl. Appeal No.4 of 2011 on the files of the Additional Sessions Court-I, Mavelikara. The above M.C. was filed under Sec.12 of the Protection of Women from Domestic Violence Act claiming maintenance at the rate of `5,000/- per mensem and also for a residential order to direct the 1st petitioner to provide an alternative accommodation to the 1st respondent as enjoyed by her in the shared house and to pay rent for the same. A protection order was also Crl.R.P. No.1902 of 2011 -:

2. :- sought for.

2. The 1st respondent is the wife of the 1st petitioner and petitioners 2 and 3 are the parents of the 1st petitioner. According to the averments in the petition, the 1st respondent is the legally wedded wife of the 1st petitioner, who is entitled to get maintenance allowance from the 1st petitioner. But the 1st petitioner has failed to maintain her and refused to pay maintenance allowance. The 1st respondent was subjected to physical torture and she was pushed away from the matrimonial home. The 1st petitioner admitted the marital status of the 1st respondent; but denied the allegation that he refused to pay maintenance allowance and treated her cruelly and pushed out the 1st respondent from the house.

3. Both parties adduced oral evidence. No documentary evidence had been adduced. After considering the evidence on record, the court below had directed the 1st petitioner to pay maintenance Crl.R.P. No.1902 of 2011 -:

3. :- allowance at the rate of `3,000/- per mensem. He was also directed to provide alternative accommodation as prayed for and also prohibited him from causing any obstruction to the peaceful residence of the 1st respondent wherever she resides. The legality of this order is under challenge in this revision petition.

4. Heard the learned counsel for the revision petitioners and the learned counsel for the 1st respondent. Both counsel appearing for the parties advanced arguments in support of their respective contentions raised in the M.C. as well as in the appeal.

5. The marital status of the 1st respondent is not disputed. After analysing the evidence on record, the learned Sessions Judge observed that the petitioners failed to bring about the circumstances under sub- section (4) of Sec.125 of the Cr.P.C., the reasons for which the wife is not entitled to get maintenance from the husband. Though the 1st respondent denied the Crl.R.P. No.1902 of 2011 -:

4. :- allegation that he refused to pay maintenance allowance, no evidence has been adduced to show that he has been paying maintenance allowance to the 1st respondent. It was also contended that the 1st respondent is a tailor by profession and earning `150/- per day and she has landed properties and bank deposits also. But no evidence had been adduced to substantiate the said contention also.

Indisputably, the 1st petitioner is a soldier employed in the Defence service even now and needless to say, he has sufficient means to pay maintenance allowance to his wife. Though he contended that the 1st respondent failed to perform her marital obligations, he failed to substantiate the said contention in evidence. It has also come out in evidence that the 1st petitioner has already alienated the house where they were resided together at the time of marriage. As rightly held by the court below, that does not exempt the 1st petitioner from providing residence to the 1st CrI.R.P. No.1902 of 2011 -:

5. :- respondent. Accordingly, the 1st petitioner is bound to provide alternative accommodation for the 1st respondent by way of rented house and pay rent for the same. I do not find any illegality or impropriety in the impugned order finding entitlement of maintenance allowance and the right of residence, in favour of the 1st respondent.

6. Coming to the correctness of the quantum of maintenance allowance. There is no evidence to show that the 1st respondent is employed or she has any kind of source of income. The 1st respondent/ husband, being a soldier, having fixed salary, he is liable to pay maintenance allowance to his wife in accordance with her living status, standard of life and day-to-day requirements.

7. The learned counsel for the 1st petitioner pointed out that the 1st respondent/wife has 50 sovereigns of gold ornaments and she had admitted in both courts that she is in possession of gold CrI.R.P. No.1902 of 2011 -:

6. :- ornaments. I am of the opinion that merely on the reason that the 1st respondent has 50 sovereigns of gold ornaments, the husband cannot be exempted from the liability to pay maintenance allowance under Sec.125 of the Cr.P.C. In that view of the matter, I find that the direction to pay `3,000/- per mensem as maintenance allowance is not excessive and there is no reason to interfere with the quantum of maintenance allowance fixed by the court below.

8. The learned counsel for the 1st petitioner prayed for some time to pay the arrear. Having regard to the facts and circumstances of this case, the 1st petitioner is given four months time to pay the arrear, provided that half of the entire arrear

shall be remitted within two months and the remaining shall be remitted within the next two months. In case the 1st petitioner fails to pay the first instalment within the time specified above, this instalment facility will stand automatically vacated and the 1st respondent will be CrI.R.P. No.1902 of 2011 -:

7. :- at liberty to realise the entire arrear in lump sum in accordance with law. This revision petition is disposed of accordingly. Sd/- (K. HARILAL, JUDGE) Nan/ //true copy// P.S. to Judge

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com