
(2011) 03 MAD CK 0380
In the Madras High Court
Case No : Criminal R.C. No. 271 of 2009

G. Sivakumar

APPELLANT

Vs

Santhanalakshmi and Midhunavignesh Kumar, rep. by mother
Santhanalakshmi

RESPONDENT

Date of Decision : 24-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 125
Hindu Marriage Act, 1955 — Section 13(1)

Citation : (2011) 2 DMC 746

Hon'ble Judges : R. Mala, J

Bench : Single Bench

Advocate : P.T. Asha, for Sarvabhauman Associates, for the Appellant; C.D. Johnson, for the Respondent

Judgement

R. Mala, J.—This revision has been preferred by the revision Petitioner/husband against the order passed in M.C. No. 42 of 2006, on the

file of the Family Court, Coimbatore, for awarding maintenance of Rs. 1,000/-to the first Petitioner/wife, who is the first Respondent herein and

Rs. 750/-to the second Petitioner/son, who is the second Respondent herein.

2. The gist and essence of the petition is as follows:

(i) The petition is filed u/s 125 of Code of Civil Procedure, to direct the Respondent/husband to pay a sum of Rs. 5,000/-per month for both the

Petitioners/wife and son.

(ii) A marriage was performed between the first Petitioner and the Respondent on 24.08.1998. After the marriage, the Respondent/husband and

his family members demanded Rs. 1,00,000/-as dowry from the first Petitioner/ wife. They ill-treated her and thereafter, she was driven out from

her matrimonial home. After that, due to the lawful wedlock, s he gave birth to a male child on 12.08.1999. But neither the Respondent/husband

nor his family members never take care about the first Petitioner/wife and her child. Thereafter, the Respondent/husband filed a petition in O.P.

No. 391 of 1999, seeking the relief of restitution of conjugal rights. The said petition was dismissed as ""not pressed"" and without giving any reason,

he filed a divorce petition in H.M.O.P. No. 174 of 2000, which was also dismissed. The first Petitioner/wife was also filed a petition in M.C. No.

45 of 2000 for maintenance and filed a petition in H.M.O.P. No. 215 of 2000 for restitution of conjugal rights. But the petitions were dismissed for

non appearance of the first Petitioner/wife, since the Respondent/husband has requested her not to appear and promised the first Petitioner/wife to

take her and child back to the matrimonial home. Since the Respondent/husband was not taken his wife and child back, she was forced to file the

petition in M.C. No. 42 of 2006 for maintenance. The Respondent/husband is doing finance business and earning more than Rs. 50,000/-per

month. She was forced to depend her father for each and everything. So she was forced to go for a job and now she is working as teacher in

Welfare school and earning Rs. 1,000/-per month, which is used for her travelling expenses. Since she was unable to meet out the educational

expenses of her son, she claimed Rs. 5,000/-per month for both the Petitioners.

(iii) In the counter statement filed by the Respondent/husband, he disputed that they have not demanded dowry from her. He often visited his wife

and son. The petitions in O.P. No. 391/1999 and H.M.O.P. No. 215/2000 were dismissed for default. He further stated that he is not a rich man

and he is not having such income to pay to the Petitioners Rs. 5,000/-by way of maintenance. The first Petitioner/wife is earning Rs. 5,000/-per

month, it is sufficient to maintain herself and her son. Hence he prayed for the dismissal of the petition.

(iv) The Family Court, after considering the evidence of P.W.1 and P.W.2 and D.W.1 and documentary evidence of Exs.P1 to P5, awarded

maintenance of R.1,000/-to the first Petitioner/wife and Rs. 750/-to the second Petitioner/son. Challenging the said order passed by the Family

Court, the Respondent/husband has come forward with this revision.

3. The learned Counsel for the revision Petitioner/ Respondent/ husband

submitted that the petition was filed only to harass the Petitioner herein.

The first Respondent/wife has not been able to prove that her husband is earning Rs. 50,000/-per month. On contrary, the wife is earning Rs.

5,000/-per month. The first Respondent has voluntarily abstained from the society of the Petitioner. Without sufficient cause, she was away from

the matrimonial home. Hence he prayed for allowing this revision.

4. The learned Counsel for the Respondents/wife and son submitted that even though the Petitioner/husband herein has filed a divorce petition in

H.M.O.P. No. 174 of 2000 dated 05.07.2004 under Ex.P4 was dismissed, he is not willing to take the Respondents/wife and son back to the

matrimonial home. Since the Petitioner/husband is not willing to take her back, she is away from the matrimonial home, which is sufficient cause for

leaving away from the matrimonial home.

5. Considered the submissions made on both sides. The documentary evidence such as Marriage invitation was marked as Ex.P1; Marriage

photographs were marked as Ex.P2; Birth certificate of the second Respondent/son was marked as Ex.P3; Divorce petition in H.M.O.P. No. 174

of 2000 was marked as Ex.P4; Copy of sale deed dated 03.01.2007 was marked as Ex.P5. While perusing Ex.P4, it shows that the divorce

petition was filed u/s 13(1)(1a)(1b) of Hindu Marriage Act under cruelty as well as the desertion. But the Family Court has not accepted the same,

dismissed the petition, which shows that the revision Petitioner is not willing to take her back to the matrimonial home. Moreover, the

Petitioner/husband filed the divorce petition, which would clearly indicate the mind of the Petitioner/husband herein that he does not want to take

his wife and child to the matrimonial home. While perusing the evidence of P.W.1/ wife and P.W.2/father of the wife, it has clearly proved that the

Petitioner/husband herein has demanded Rs. 1,00,000/-as dowry. Since she was not in a position to pay that amount, she was driven out from the

matrimonial home and now she is living with her parents and after that, she gave birth to a male child. But there is no iota of the evidence before the

Court to show that the Petitioner/husband herein has taken steps to take his wife to the matrimonial home. In such circumstances, I am of the view

that the first Respondent/wife was away from the matrimonial home for the sufficient cause. So both the Respondents/wife and son are entitled to

the maintenance.

6. During the arguments, the learned Counsel for the Petitioner/husband has not disputed the maintenance given to the second Respondent/son. So

the only grievance is that the wife of the revision Petitioner is working as a teacher and she is earning Rs. 5,000/-per month, so she is not entitled to

the maintenance. But, admittedly, in the pleadings itself, the first Respondent/wife has stated that since she wants to give best education to her son,

she admitted her son in Gopalsamy Naidu Matriculation School at Peelamedu, Coimbatore, which is 15 kilometres away from her parents house.

In para-10 of the petition, she stated that ""her father is sole income earner in her family and for each and everything, she was forced to depend on

him and to look after her and her son, she was forced to go for a job and now working in welfare school and earns around Rs. 1,000/-per month,

which is used for her travelling expenses"". Here, P.W.1/wife has deposed that she is earning Rs. 1,000/-per month, which is used for her travelling

expenses. To meet out further expenses in her life, she needs further amount. In such circumstances, I am of the view that even an earning women

also entitled to the maintenance from her spouse, provided salary is not sufficient to maintain herself and her family. Here, she is earning Rs.

1,000/-per month. Rs. 1,000/-is not sufficient to maintain herself, so she needs further maintenance amount. Hence she has come forward with the

petition for maintenance.

7. Admittedly, in the petition itself, the first Respondent/wife has stated that she was forced to go for a job and working in a Welfare School and

also earning around Rs. 1,000/-per month, which is used for her travelling expenses. In such circumstances, the Petitioner/husband herein has also

not taken any steps to issue summons to the Headmaster of the Welfare School to prove that the first Respondent/wife is earning Rs. 5,000/-per

month. While perusing the evidence of P. Ws.1 and 2, the Petitioner/husband gone to the extent of saying that his son is not studying, which is

clearly proved that to avoid the responsibility to pay maintenance to his son, he posed such a suggestion to P.W.2. One more important factor is

Ex.P5, in which, the Petitioner/husband and his family sold the property for Rs. 30,00,000/-, wherein, this Petitioner/husband has received Rs.

4,90,000/-. On 27.02.2006, so he is having sufficient means.

8. The learned Counsel for the Petitioner/husband submitted that the Petitioner is only Acting Driver and his monthly salary is only Rs. 2,000/-,

which is not sufficient to maintain himself. But the above argument is unacceptable one, because M.C. No. 42 of 2006 was filed on 27.02.2006

and they sold the property on 03.01.2007. During the pendency of the maintenance petition, to defeat the right of the Respondents for

maintenance, he along with his family members sold the property, which is evidenced by Ex.P5. Considering the same, the Family Court in para-8

of its judgment concluded that the Petitioner/husband possessed Rs. 4,90,000/-, even though the first Respondent/wife is a working woman, her

income is only Rs. 1,000/-per month, which is not sufficient to maintain herself and her son, hence the Family Court awarded Rs. 1,000/-to the first

Respondent/wife. I do not find any illegality or irregularity in the order passed by the Family Court. Hence the maintenance awarded to the first

Respondent/wife is sustainable.

9. Since the second Respondent/son is a minor and he is studying, he is entitled to the maintenance. So the maintenance amount of Rs. 750/-

awarded by the Family Court is fair and proper. The quantum of the amount awarded by the Family Court does not warrant any interference. So

the order passed by the Family Court is liable to be confirmed and hence it is hereby confirmed.

10. In fine.

¶½ The order passed by the Family Court is confirmed.

¶½ The Criminal Revision Case is dismissed.