
(2011) 04 MAD CK 0300
In the Madras High Court
Case No : Criminal R.C. No. 1285 of 2007

Renuka

APPELLANT

Vs

Viswanathan rep. by his Power of Attorney S. Ravichandran

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Constitution of India, 1950 — Article 15(3), 39

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(1), 125(3), 482

Citation : (2011) 4 RCR(Criminal) 350

Hon'ble Judges : R. Mala, J

Bench : Single Bench

Advocate : V. Sairam, for the Appellant; T.P. Manoharan, for the Respondent

Final Decision : Allowed

Judgement

R. Mala, J.—This criminal revision arises out of the order dated 18.07.2007 in M.C. No. 48/2006, passed by the learned Judge of Family Court, Pudhucherry.

2. The averments in the petition are as follows:

The Petitioner married the Respondent on 10.02.2000 and they are close relatives. After the marriage, both were settled at U.S.A., where the Respondent was working at that point of time. In April 2004, the Respondent, after attending obsequies of the Respondent's father, left to U.S.A. without the Petitioner, the Petitioner was residing with her mother-in-law, who treated her with cruelty. With the knowledge and consent of the Respondent, the Petitioner's mother-in-law left the Petitioner in her parents' house at Puducherry in 2004. The Respondent has failed and neglected to maintain the Petitioner. The Respondent is working in IB Mass a Computer Software Consultant in U.S.A. earning about 90,000 U.S. Dollars per annum (i.e.) about 7,500 U.S. Dollars per month. Since the Respondent deserted the Petitioner, she was unable to maintain herself. Hence, she come forward with the petition in M.C. No. 48/2006 for maintenance of 2,500 U.S. Dollars or its equivalent Indian currency.

3. The counter statement filed by the Respondent is as follows:

(i) From the date of marriage, the behavior of the Petitioner was very strange and arrogant. Due to the behavior of the Petitioner, the Respondent was not able to attend his work peacefully and consequently, he was losing all his prospects in his job.

(ii) After the Petitioner had conceived, the Doctors, who examined her at U.S.A. have stated that there were serious abnormalities and the same have to be compulsorily terminated immediately. That factor was duly informed and explained to the parents of the Petitioner and the Respondent. Even then, the Petitioner's father had also gone to the extent of threatening the Respondent's father with dire consequences. Unable to tolerate such torture and threats, the Respondent's father suffered a massive heart attack.

(iii) In order to provide comfort to the Petitioner, the Respondent spend huge amounts and brought her mother to U.S.A. Taking advantage of the same, her mother had ill advised and further poisoned the mind of the Petitioner. So the behavior and attitude of the Petitioner had further changed and she had developed a hatred towards the Respondent and his parents.

(iv) After the marriage, during August 2001, the Petitioner and the Respondent came to India, with return tickets, for four weeks and ever since they planned the trip, the Petitioner started insisting the Respondent that from the airport she wants directly to go to her parents' house at Puducherry. When the Petitioner was with her parents, by the time of five months of pregnancy, the Doctors at Chennai also advised the Petitioner to terminate the baby due to some abnormalities and terminated the baby. This time, the Petitioner started abusing the Respondent and his parents and his sisters in a most untoward manner and that the Respondent and his parents are the root cause for her abortion, since they are closely relatives.

(v) The Respondent came to India in July 2002, to attend his father's 60th anniversary at Thirukadaiyur. For this function, the Petitioner did not turn up. As per the compromise, during November 2002, the Respondent sent the tickets for the Petitioner and went to the airport to receive her. From the airport itself, the Petitioner started behaving in a rude manner and she pushed the luggage cart towards the Respondent in front of his friends. She also threatened the Respondent that she would cut her wrist, if he do not listen to her.

(vi) The Respondent's father passed away on 10.04.2004. To attend his funeral, the Respondent along with the Petitioner came to India with return tickets for both of them. When the Respondent asked the Petitioner to get ready for return to U.S.A. in the month of May 2004, she refused to come with him stating that her sister's marriage falls on 23rd June 2004 and that after finishing the marriage she will come to U.S.A. After the Respondent returned to U.S.A., the Petitioner started torturing the Respondent's mother. In the said circumstances, the Petitioner's parents came to Villupuram and informed to the Respondent's

mother that they are taking the Petitioner with them, since they have to purchase sarees, jewels and they have to go to temple for performing pooja (i.e.) 23.06.2004, after the marriage and the Petitioner went along with them. Thereafter, the Petitioner never turned up till date. The Petitioner intentionally deserted the Respondent with an animus to break the conjugal home, she went to her parent's house at Puducherry. After that she joined M. Sc. two years course at Aravindar Arts College without the knowledge and consent of the Respondent.

(vii) The Respondent has presented jewels out of love and affection towards the Petitioner. Moreover, all tickets including for the Petitioner's mother were spent by the Respondent. The Petitioner is an M. Sc. graduate in Computer Science and she is highly qualified for a job and there are more opportunities for her in getting a job in the computer field. The Respondent is not a permanent citizen of U.S.A. and at any time, he may be sent to India by his employer. The Petitioner has claimed a sum of 2500 Dollars per month, which equals to Rs. 1,10,000/-. It is highly unimaginable for a single women, who does not have any issues and who is staying at Puducherry, where the cost of living is less comparatively. The Petitioner is a person of means and moreover her father is a politically and monetarily influential person. As a daughter, she is entitled to her share in her parents' property. So she is not entitled for any maintenance. Hence, the Respondent prayed for the dismissal of the petition.

4. The trial Court, after considering both the oral and the documentary evidence of P.W.1, R.W.1 and R.W.2 and Exs.P1 to P3 and Exs.R1 to R20, dismissed the petition in M.C. No. 48/2006, stating that without any cause, the Petitioner was away from the matrimonial home, against which, the Petitioner/wife come forward with this revision.

5. The learned Counsel for the Petitioner/wife submitted that the factor of marriage is admitted. Since the Respondent's mother treated the Petitioner cruelly, she is away from her matrimonial home. The trial Court, has not considered this aspect in proper perspective, dismissed the maintenance case. The Respondent/husband has not, even in his counter statement, stated that he is ready and willing to take back the Petitioner/wife. So the Petitioner/wife is entitled for claiming maintenance. To substantiate his arguments, he relied upon the decisions of the apex Court.

6. Refuting the same, the learned Counsel for the Respondent/husband submitted that the Petitioner/wife was away from the matrimonial home, without sufficient cause. Further more, since she is an M. Sc. Graduate, she is capable of maintaining herself and at present, she is working. Hence, he prayed for the dismissal of the revision. To substantiate the same, he also relied upon various decisions of the apex Court.

7. Considered the rival submissions made on both sides.

8. The factor of marriage is admitted. The Petitioner is the maternal uncle's

daughter of the Respondent/husband. The marriage is an arranged marriage. After the marriage, both were living in U.S.A. They came to India to attend the funeral of Respondent's father and thereafter, her never taken back by her husband. Now this Court has to decide that whether the trial Court is correct in held that the Petitioner/wife was away from matrimonial home without any cause?

9. While considering the evidence of R.W.1, the Respondent/husband, when they return back to U.S.A., they are not having visa. He is staying in India nearly five weeks and also making arrangements for getting visa for both of them. He asked his wife to apply visa, but she refused to apply the same. So he has not applied visa for her.

10. At this juncture, it is appropriate to consider the counter statement filed by the Respondent/husband. In para-11 of his counter statement, he stated as follows:

His father was very much worried about his only son's future and the problems he is facing with his wife daily that resulted in heart attack and he passed away on 10th April 2004. To attend his funeral, the Respondent along with the Petitioner came to India with return ticket for both of them.

In the above paragraph, he never whispered about that the visa was not in force on the day they applied for visa. So it shows that the Respondent/husband has not taken any steps to take her wife back. After that also, he came to India, but he has not taken any steps to take her back and he has not filed any documents to show that he has taken steps to take her back.

11. On the side of the Petitioner/wife, a marriage certificate was marked as Ex.P1; Letter of employment verification of the Respondent was marked as Ex.P2; A trust deed was marked as Ex.P3. On the side of the Respondent/husband, he filed twenty documents in respect of his income and his expenses. It is pertinent to note that there is Rental Agreement, which was marked as Ex.R18. The said Rental Agreement was executed between the landlord Water stone at Fremont and Viswanathan Jayaraman and Renuka Ponnourangam and the lease was executed on 30.12.2006. Admittedly, on that day, she was at her parents house. So it shows that the Respondent/husband created the said rental agreement for evading to pay maintenance to his wife.

12. It is pertinent to note that during the tendency of the revision, the Respondent/husband filed an affidavit along with one document, the "Facebook Profile" allegedly created by the Petitioner herself in the Face Book Social Networking Website, which shows that the Petitioner/wife was working. But, the said document is not an admissible evidence and the entire averments in the affidavit filed by the Respondent are only making allegation against the Petitioner.

13. Admittedly, the Petitioner was conceived twice. Since the baby was found with abnormalities, the baby was terminated twice, once at USA and second time

at Chennai. So it shows that both the Petitioner and the Respondent was living happily in U.S.A. After the death of his father only, the problem arose between both of them. But, there is no iota of the document produced by the Respondent/husband to prove that he is always ready and willing to take his wife back and he has also not filed any application for restitution of conjugal rights.

14. Per contra, R.W.1, the Respondent/husband, in his cross-examination, stated as follows:

Vernacular (Tamil) Portion Deleted

After he filed an application in U.S.A., his wife has also filed an application for restitution of conjugal rights in India. It shows that the intention of the Respondent is that he does not want to take her back, for the reason he filed an application in U.S.A. But, however, the Petitioner herein has filed M.O.P. No. 220/2006 for restitution of conjugal rights. Because of the attitude of the Respondent, she was away from the matrimonial home and filed a petition for claiming maintenance.

15. As per the evidence of P.W.1, the Petitioner/wife, the Respondent's mother has left the Petitioner in her parents' house. Even though the Petitioner in her petition she made such an averment, the mother of the Respondent has not denied the same by way of filing any evidence. So the cumulative evidence of P.W.1, R.W.1 and the averments both in the counter statement and the petition have clearly proved that since the Respondent does not want to take his wife back, he has not taken any steps to get visa for her. In such circumstances, I am of the view that the trial Court has committed an error in dismissing the petition in M.C. No. 48/2006 stating that " the Petitioner is staying in India itself without joining him without any valid reason. we cannot say that the Respondent has neglected and failed to maintain her."

16. At this juncture, it is appropriate to consider the following decisions relied upon by the learned Counsel for the Petitioner/wife.

(a) 1999 SCC 1118 (Rajathi v. C. Ganesan), in paragraph-7, it reads as follows:

7. .. It rather unnecessarily put the burden on the wife to prove that she was unable to maintain herself. The words "unable to maintain herself" would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after the desertion to survive somehow. Section 125 is enacted on the premise that it is obligation of the husband to maintain his wife, children and parents. It will, therefore, be for him to show that he has no sufficient means to discharge his obligation and that he did not neglect or refuse to maintain them or any one of them. The High Court also observed that the wife did not plead as to since when she was living separately. This is not quite a relevant consideration. Even though the wife was unable to prove that the husband had remarried, yet the fact remained that the husband was living with another woman. That would entitle the wife to live

separately and would amount to neglect or refusal by the husband to maintain her. The statement of the wife that she was unable to maintain herself would be enough and it would be for the husband to prove otherwise.

(b) 2005 SCC 1089 (Shantha alias Ushadevi and Anr. v. B.G. Shivananjappa) in paragraph-8, it reads as follows:

8. We are, therefore, of the view that in the peculiar circumstances of the case, the bar u/s 125(3) cannot be applied and the High Court has erred in reversing the order of the Sessions Judge. It must be borne in mind that Section 125 Code of Criminal Procedure is a measure of social legislation and it has to be construed liberally for the welfare and benefit of the wife and daughter. It is unreasonable to insist on filing successive applications when the liability to pay the maintenance as per the order passed u/s 125(1) is a continuing liability.

(c) 1978 SCC 508 (Captain Ramesh Chander Kaushal v. Veena Kaushal and Ors.) in paragraph-9, it reads as follows:

9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by Courts are not petrified print but vibrant words with social functions to fulfill. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause--the cause of the derelicts.

17. The learned Counsel for the Respondent/husband also relied upon the following decisions to substantiate his arguments.

(a) Pathumma and Another Vs. Muhammad, in which, it reads as follows:

The High Court in its provisional jurisdiction was not justified in making a re-assessment of the evidence and substituting its own views for those of the Magistrate on the question of fact.

(b) Rajathi Vs. C. Ganesan, in paragraph-12, it reads as follows:

12. It was not necessary for the High Court to examine the whole evidence threadbare to exercise jurisdiction u/s 482 of the Code. Rather in a case u/s 125 of the Code the trial court is to take a prima facie view of the matter and it is not necessary for the Court to go into the matrimonial disputes between the parties in detail. ..

Considering the citations relied upon by both the counsel, it is true that this legislation is a social welfare legislation to help the deserted wife and daughter.

18. It is pertinent to note that the Respondent/husband himself admitted in his evidence that his wife has filed a petition for restitution of conjugal rights, after

he filed a petition in U.S.A., which shows that instead of taking her back to U.S.A., he filed a case against her. So she was forced to file a petition for restitution of conjugal rights and also claiming maintenance. In such circumstances, I am of the view that the Petitioner is entitled to get maintenance as per the dictum laid down in this provision, a measure of social justice and is to be construed liberally for the protection of women. Because of the attitude of the Respondent/husband, she was away from her matrimonial home. So I am of the view that the Petitioner/wife is entitled to maintenance.

19. Now, this Court has to consider the decision relied upon by the learned Counsel for the Respondent reported in Ratilal Bhanji Mithani Vs. State of Maharashtra and Others, in which, it was stated as follows:

The Criminal Courts and the High Courts have ample power and jurisdiction even in a case of a conviction to direct additional evidence in the interest of justice and fair play rather than take a different view of the oral evidence. Much more so can the High Court in a case of discharge direct even before setting aside the order of discharge to take further evidence or additional evidence if it considers that it is necessary in the interest of justice to do so. "There is no quarrel over the proposition. But, however, as already stated that a page from the face book, which shows that the Petitioner is working, has not been proved in accordance with law. Admittedly, two pages from the face book are taken to show that the Petitioner/wife is working. But the Respondent herein has not taken any steps to examine the witness to substantiate the same. Admittedly, when P.W.1, the Petitioner/wife was in witness box, no suggestion was posed her that whether she is working or not. I do not find any merits in the argument that the Petitioner is working.

20. Admittedly, the Petitioner is staying with her parents' home. Even though the Petitioner's parents having three daughters, all of them were married. The Petitioner alone is living with her parents. So the contention of the Respondent that the Petitioner is not entitled to claim maintenance, does not merit acceptance. The husband has to maintain his wife. As per the document under Ex.R1, his monthly income is 6,499 U.S. Dollars. Ex.R1 is a certificate that was given at the time of appointment on 16.06.1998. But the maintenance case was filed in the year 2006. Considering the cost of living and monthly income of the Respondent/husband, I am of the view that the Petitioner/wife is entitled to Rs.25,000/- per month from the Respondent/husband.

21. In fine, The Criminal Revision is allowed.

The order passed by the trial Court is hereby set aside.

The Petitioner/wife is entitled to Rs. 25,000/- per month from the Respondent from the date of petition. The Respondent/husband is directed to pay the amount on fifth of every month from the succeeding month.