

(2013) 07 MAD CK 0224

In the Madras High Court

Case No : Criminal R.C. No's. 417 and 491 of 2011 and M.P. No's. 1 and 1 of 2011

S. Ramila

APPELLANT

Vs

E. Srinivasan
E. Srinivasan Vs S. Ramila

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125(1)
Hindu Marriage Act, 1955 — Section 9

Citation : (2013) MLJ(Cri) 401 : (2013) 4 RCR(Civil) 627 : (2013) 4 RCR(Criminal) 467

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : R. Singgaravelan in Criminal R.C. No. 417 of 2011 and Mr. P. Jagadeesan in Criminal R.C. No. 491 of 2011, for the Appellant; P. Jagadeesan in Crl. R.C. No. 417 of 2011 and Mr. R. Singgaravelan in Crl. R.C. No. 491 of 2011, for the Respondent

Judgement

C.S. Karnan, J.—The brief history of the case are as follows:-

The revision petitioner herein in Crl. R.C. No. 417 of 2011/wife, has filed a Civil Miscellaneous Petition in C.M.P. No. 192 of 2004 in M.C. No. 8 of 1990, on the file of Family Court, Salem against the respondent herein in Crl. R.C. No. 417 of 2011/husband, to enhance the quantum of compensation from Rs. 500/- to Rs. 9,000/- per month, from the date of filing this petition till her life time. The petitioner/wife stated that on 12.07.1990, she filed a maintenance case in M.C. No. 8 of 1990, on the file of Judicial Magistrate-III, Salem seeking maintenance u/s 125(1) of Cr.P.C., at the rate of Rs. 1,000/- as monthly maintenance. The maximum quantum that can be awarded per head u/s 125(1) of Cr.P.C., during 1990 was only Rs. 500/-. The learned Judicial Magistrate-III, Salem after hearing both sides, passed the orders in M.C. No. 8 of 1990 and in para 12 and 13 of the order categorically found that the respondent is getting lot of income from silver business as well as by way of rent from house and shops, but awarded only Rs.

400/- per month as maintenance instead of Rs. 500/- per month, which was maximum quantum that can be awarded per head during 1994.

Thereafter, the petitioner/wife has filed a revision petition in C.R.P. No. 29 of 1994, before the Additional Sessions Judge, Salem, against the order of Judicial Magistrate, seeking enhancement of maintenance at the rate of Rs. 500/- per month, which was the maximum quantum that can be awarded per head during the relevant period. In the said order, in para 10 and 11, the learned II Additional Sessions Judge, Salem, categorically held that it has been proved that the respondent/husband is a man of substantial means owning several crores worth of movable and immovable properties and earning several lakhs of rupees as income per month and so the petitioner should be awarded the minimum quantum of maintenance that is admissible u/s 125(1) of Cr.P.C. and thereby set-aside the order of the Judicial Magistrate-III, Salem and enhanced the quantum of maintenance from Rs. 400/- to Rs. 500/- per month with effect from 12.07.1990.

2. In the meanwhile, the respondent/husband had also filed a revision in C.R.P. No. 219 of 1994, before the High Court, against the order of the Judicial Magistrate-III, Salem in M.C. No. 8 of 1990. The High Court, after enquiry, held that the respondent is a man of substantial means doing silver business and owning several landed properties and confirmed the order of the Judicial Magistrate-III, Salem and dismissed the revision in C.R.P. No. 219 of 1994, filed by the respondent/husband. Even after the orders in M.C. No. 8 of 1990, by the Judicial Magistrate-III, Salem and even after the orders in C.R.P. No. 219 of 1994 during 1997 also, the respondent did not pay the maintenance awarded u/s 125(1) of Cr.P.C. Hence, the petitioner/wife filed C.M.P. in M.C. No. 8 of 1990, for recovering the arrears of maintenance and during the period 1999 only, the respondent/husband paid the arrears for the past several years amounting to Rs. 40,000/- in one lump sum, after the arrest warrant issued by the Family Court. Thus, the petitioner/wife had incurred substantial litigation expenses with regard to these proceedings. During the year 1986, the respondent/husband had filed a divorce petition against the petitioner/wife and took it up to the High Court, Chennai, and the High Court dismissed the divorce appeal in C.M.S.A. No. 37 of 1992 against C.M.A. No. 49 of 1998 against H.M.O.P. No. 26 of 1986 and finally no divorce was granted, but the respondent/husband refused to take back the petitioner.

3. Therefore, the petitioner/wife filed F.C.O.P. No. 89 of 1999, before the Family Court, Salem u/s 9 of the Hindu Marriage Act and sought restitution of conjugal rights against the respondent and the same was allowed on 09.07.2003, but the respondent/husband refused to take back the petitioner/wife. During these proceedings, the petitioner filed an Interlocutory Application in I.A. No. 165 of 1999 in F.C.O.P. No. 89 of 1999, seeking interim maintenance at the rate of Rs. 4,000/- per month and litigation expenses of Rs. 10,000/-. The Family Court, Salem granted interim maintenance at the rate of Rs. 3,000/- per month from

the date of interlocutory application i.e., from 05.08.1989 till disposal of F.C.O.P. No. 89 of 1999, i.e., till 09.07.2003. But, the respondent did not pay the interim maintenance or the litigation expenses so far. In I.A. No. 165 of 1999 in F.C.O.P. No. 89 of 1999, the Family Court, Salem held that the wife should be provided towards food, cloths, shelter, medical expenses etc., commensurate with the income and status of the husband, the wife is unable to maintain herself since she is not employed. Further, she is not getting any income from any other source. The respondent is getting several thousands of rupees as rental income and getting not less than Rs. 20,000/- per month and, at present, the respondent is getting Rs. 30,000/- as his share from silver article business. The respondent filed C.R.P. No. 659 of 2003, on the file of High Court, Madras against I.A. No. 165 of 1999 in F.C.O.P. No. 89 of 1999. The High Court of Madras, confirmed the order of the Family Court and dismissed the C.R.P. No. 659 of 2003 against I.A. No. 165 of 1999 in F.C.O.P. No. 89 of 1999, with costs of Rs. 2,000/-. These are civil proceedings and these findings are binding in criminal proceedings. From September 2001 onwards, the maximum quantum of monthly maintenance that can be awarded per head u/s 125(1) of Cr.P.C. has been made unlimited.

4. The petitioner was eligible for higher quantum of monthly maintenance when it was filed in 1990 itself, but there was a limit with regard to the quantum that can be awarded at that time, but now it is not so, the petitioner has filed the petition seeking enhanced maintenance at the rate of Rs. 9,000/- per month instead of Rs. 500/- per month.

5. The respondent/husband has filed a counter statement and opposed the enhancement of maintenance petition. The respondent stated that he has filed a divorce petition in H.M.O.P. No. 25 of 1986, on the file of Additional Sub Judge, Salem and the same was decreed on 05.10.1988. During the pendency of the above divorce petition, the petitioner herein filed interim maintenance petition seeking maintenance with legal expenses against the respondent herein I.A. No. 17 of 1986 and the Court ordered interim maintenance of Rs. 150/- per month from the date of petition. The respondent further stated that the petitioner filed an appeal before the 1st Additional District Judge, Salem as against the order in the divorce petition in C.M.A. No. 49 of 1988. The said appeal was allowed on 26.11.1991. Aggrieved by the appellate Court's order, the respondent herein has filed C.M.S.A. No. 37 of 1992 before the High Court and the same was dismissed on merits. In the above appeal, the petitioner herein filed a petition for enhanced interim maintenance before the High Court, Madras and after enquiry, the High Court ordered to pay enhanced interim maintenance of Rs. 350/- per month from 01.03.1993 till disposal of the case. Hence, during the pendency of the above second appeal also, the petitioner herein has received interim maintenance from the respondent.

6. The respondent further stated that the allegation that the respondent has not taken any steps to take back the petitioner is true because she had physically

and mentally caused cruelty not only when she lived with him but also when she was wandering in the Court and also instituting false cases, one after another against the respondent. The respondent, further stated that the petitioner filed maintenance case in M.C. No. 8 of 1990, on the file of Judicial Magistrate-III, Salem dated 12.07.1990 u/s 125(1) of Cr.P.C. and claimed Rs. 1,000/- per month as maintenance from the respondent and the Judicial Magistrate-III ordered maintenance of a sum of Rs. 400/- per month. Against the said order, the petitioner filed C.R.P. No. 29 of 1994 before the II Additional District Judge, Salem and claimed enhanced monthly maintenance. The learned Judge ordered to pay enhanced maintenance i.e., a sum of Rs. 500/- per month from 12.07.1990, on 15.01.2001. The respondent filed revision in C.R.P. No. 219 of 1994 before the High Court against the petitioner as against the order in M.C. No. 8 of 1990, dated 28.02.1994, on the file of Judicial Magistrate-III, Salem, but the revision was dismissed and the learned Magistrate's order was confirmed. Subsequently, the entire arrears of maintenance had been paid by the respondent, without delay in March 1999. During the pendency of maintenance case in M.C. No. 8 of 1990, on the file of Judicial Magistrate-III, Salem, the petitioner, without having any intention to have a conjugal right with the respondent, but with an intention to coerce the respondent to part with more and more maintenance amount through civil Court, had filed a pauper suit on 17.03.1992 before the Sub Judge, Salem. The respondent sent for documents to prove her employment that she was working in Salem Textiles Limited and as such, she is an earning lady. The concerned authorities had produced P.F. records of the petitioner and subsequently she paid the entire Court fee. It clearly proves that she is an earning lady.

7. The respondent further stated that the petitioner has filed F.C.O.P. No. 89 of 1999 against the respondent for restitution of conjugal rights in which she filed an interim maintenance in I.A. No. 165 of 1999, and the Court ordered maintenance against the respondent to pay a sum of Rs. 3,000/- per month and also directed him to pay a sum of Rs. 7,000/- as litigation expenses. She also filed an interlocutory application in I.A. No. 45 of 2003, for return of jewels against the respondent herein and it was allowed.

8. The respondent further stated that he is not leading any luxurious life and he is not doing any gold jewels business or money lending. The respondent further stated that he had been allotted joint family property in the year 1976 and the same was disposed in order to discharge the marriage debts and other debts. As such, the respondent has no movable or immovable properties. The petitioner's allegations have not been supported by any substantial documentary evidence regarding receipt of rental income by the respondent or silver business by the respondent. The respondent is doing repairs in electronic items to the customers who invite him to attend the same and as such he is earning Rs. 2,000/- per month. The respondent denied that he is doing business, along with his father and brother either in the name of Meenakshi Jewellery with GVT seal of Jayalakshmi Jewellery renamed as Swarnambigai Jewellery.

9. The respondent further stated that he had paid the following amounts in the following cases by way of interim maintenance in I.A. No. 17 of 1986 in H.M.O.P. No. 25 of 1986 and also in M.C. No. 8 of 1990, on the file of Judicial Magistrate-III, Salem from 01.03.1986 to 28.02.1993 at the rate of Rs. 150/- per month and thereafter from 01.03.1993 till disposal of the appeal in C.M.S.A. No. 37 of 1992 upto January 1992, at the rate of Rs. 350/- per month. The above payments were made as interim maintenance, while the divorce case was pending. The respondent further stated that the petitioner had not given any details and reasons to claim the enhanced maintenance of Rs. 9,000/- per month, since the respondent has no paying capacity for such a huge amount. Further, the petitioner is living with her parents, who extended their support for her livelihood. The petitioner is the only legal-heir of her parents, who possess valuable properties worth about Rs. 50,00,000/-. The petitioner is a well qualified person as a degree holder and she is employed at M/s. Salem Textiles Limited and earning sufficient income. Hence, the respondent prays to dismiss the said enhancement of monthly maintenance petition.

10. After considering the averments and on perusing the documents marked by both parties and on hearing the arguments of either side, the learned Family Court Judge, Salem ordered enhanced monthly maintenance from Rs. 500/- to Rs. 6,000/- per month from the date of filing the petition i.e., 17.06.2004 till the date of the order i.e., 20.12.2010 and from this day, the respondent shall pay a sum of Rs. 7,500/- per month to the petitioner till her lifetime. Further, the respondent was directed to pay a sum of Rs. 10,000/- to the petitioner towards litigation expenses.

11. Not being satisfied with the quantum of monthly enhanced maintenance, the revision petitioner/wife has filed the revision in CrI. R.C. No. 417 of 2011.

12. Aggrieved by the order passed by the learned Family Court Judge, the revision petitioner/husband has filed the revision in CrI. R.C. No. 491 of 2011.

13. The highly competent counsel for the revision petitioner in CrI. R.C. No. 417 of 2011/wife argued that the trial Court passed order in C.M.P. No. 192 of 2004, awarding Rs. 6,000/- per month as maintenance from the date of filing the petition to the date of order i.e., 20.12.2010 and Rs. 7,500/- per month as maintenance from the date of order i.e., 20.12.2010 till her life time and Rs. 10,000/- as litigation expenses, but the wife is entitled to receive monthly maintenance of a sum of Rs. 9,000/- from the date of filing the enhancement monthly maintenance petition in C.M.P. No. 192 of 2004 in M.C. No. 8 of 1990. The respondent/husband had unnecessarily dragged on the proceedings for the past six years. The lower Court was not justified in restricting the enhanced maintenance amount of a sum of Rs. 7,500/- per month from the date of order till her life time in the operative portion of the order, which is not sustainable under law. The respondent is doing silver business and earning huge amount through his business. The petitioner's health has deteriorated and as such, the medical expenses are also incurred every month. The petitioner is an

unemployed graduate but is not an earning lady as alleged by the respondent. Actually, the respondent was working at Canara Bank after completing his post graduation. Subsequently, he had resigned his job from Canara Bank and doing silver ornaments business along with his father and brother. His father expired on 01.10.2010 and thereafter, the respondent and his brother are managing the silver ornaments business and earning several lakhs as profit. Therefore, the respondent is a financially sound person to pay a sum of Rs. 9,000/- per month, which is a meagre amount, considering that the petitioner has to incur expenses for food, clothes, shelter, medical expenses, cosmetics, transport, entertainment and communication expenses etc.

14. The very competent counsel for the revision petitioner in Crl. R.C. No. 491 of 2011/husband, contended that the marriage was solemnized between the petitioner and respondent on 07.06.1976 and there was no issue to the spouses. Thereafter, they separated on 05.10.1983, due to strain in marital relationship. The revision petitioner/husband filed H.M.O.P. No. 25 of 1986 for divorce on the ground of cruelty and desertion, which was decreed on 05.10.1988. The wife has filed an appeal in C.M.A. No. 49 of 1988, which was allowed. In the meantime, the wife filed maintenance case in M.C. No. 8 of 1990, on the file of Judicial Magistrate-III, Salem and sought maintenance u/s 125(1) of Cr.P.C. The learned Magistrate ordered payment of maintenance of a sum of Rs. 400/- to the wife as monthly maintenance. The said order has been challenged by the husband by way of revision. The revision was dismissed and the maintenance order was confirmed. However, the wife had filed a revision for enhancement of compensation and the revision has been partly allowed and the husband was directed to pay a sum of Rs. 500/- as monthly maintenance with effect from 12.07.1990.

15. The very competent counsel further contended that the wife filed C.M.P. No. 192 of 2004 in M.C. No. 8 of 1990, for enhancement of maintenance amount from Rs. 500/- per month to Rs. 9,000/- per month and also sought a sum of Rs. 10,000/- for litigation expenses. Besides, the wife also filed original suit in O.S. No. 2 of 1998, claiming maintenance at Rs. 4,000/- per month and claiming 1/3 of share of the petitioner's family properties. In the said suit, the wife had impleaded her in-laws as defendants. The learned counsel further submitted that the wife filed F.C.O.P. No. 89 of 1999 for restitution of conjugal rights and the same was allowed as ex parte on 09.07.2003. The husband filed a petition to set-aside the ex-parte order passed in F.C.O.P. No. 89 of 1999 and the same was dismissed. The wife has filed I.A. No. 165 of 1999, praying for interim maintenance and litigation expenses and the Family Court allowed the said application in I.A. No. 165 of 1999 in F.C.O.P. No. 89 of 1999 and directed the husband to pay a sum of Rs. 3,000/- as monthly interim maintenance and also ordered to pay a sum of Rs. 7,000/- as litigation expenses.

16. The highly competent counsel further submits that C.M.P. No. 192 of 2004 in O.S. No. 2 of 1998 are pending on the file of Family Court, Salem and therefore,

the Memo has been filed by the petitioner to dispose both the cases together since both are inter-connected since the wife has also claimed maintenance in O.S. No. 2 of 1998 and the same prayer has been made in C.M.P. No. 192 of 2004, but the learned Judge has disposed the C.M.P. No. 192 of 2004 alone and the suit is still pending. The petitioner/husband is doing only repair work in electronics items and earning a meagre income of Rs. 2,000/- per month. The petitioner has got share, as an oral partition and the said properties were sold to settle his debts. The respondent is employed as a receptionist in Salem Textile Limited and she is getting a regular monthly income. Therefore, she is not entitled to receive any maintenance. The learned counsel further contended that the Ex. R7, memorandum of oral family partition and Ex. R8, urban land tax and Exs. R9 and R10, are encumbrance certificates which clearly show that the petitioner has no immovable properties in his name. As such, he does not have paying capacity to pay maintenance to the respondent/wife herein. Hence, the highly competent counsel entreats the Court to set-aside the trial Court order.

17. Per contra, the learned counsel for the revision petitioner in Crl. R.C. No. 417 of 2011/wife vehemently stated that the joint family properties are situated at Salem which are as follows:-

House property door Nos. 127, 128, 128A, 129 Appuchetty Street, Shevapet, Salem-2, Door Nos. 527, 528, Navalar Nedunchezian Salai, Shevapet Main Road, Shevapet, Salem-2, Door Nos. 16, Fort Main Road, Shevapet Main Road, Shevapet, Salem-2, Door Nos. 44A, 44B, 44C, 44D, Thandan Street, Shevapet, Salem-2, Door No. 9, Dhamodara Chetty Street, Arisipalayam, Salem-9, Door No. 16, Veeraghava Chetty Street, Arisipalayam, Salem-9, Door No. 173, Navalar Nedunchezian Salai, Shevapet Main Road, Shevapet, Salem-2, Door No. 174, Navalar Nedunchezian Salai, Shevapet Main Road, Shevapet, Salem-2.

The learned counsel further submitted that the petitioner/wife is also entitled to get half share of the above said immovable properties which are located in the prime city of Salem. The same was mentioned in the enhancement of maintenance petition, but the respondent/husband had not denied in his counter statement that he does not have any share over the joint family property. So, it clearly proves that the husband has sufficient income through the joint family property and also getting huge income through his silver ornaments business. The highly competent counsel further contended that the wife is in a deserted condition without any support and that her parents are aged persons, who are unable to extend their support in any manner.

18. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the trial Court passed in C.M.P. No. 192 of 2004 in M.C. No. 8 of 1990, this Court is of the view that:-

(i) It was not proved that the petitioner/wife is an earning lady working in Salem Textiles Limited, as receptionist through examining of employer.

(ii) The petitioner/wife had mentioned in her interim maintenance petition that several items of immovable house properties are located in Salem town and the same has not been denied by the husband.

(iii) The wife had marked a certificate issued in the name of P.W. 5 regarding the silver business run by her husband and the same was confirmed by evidence of P.W. 5. Further, considering the plight of the petitioner at present, this Court is of the view that the minimum requirements of her basic needs, viz., food, clothes, shelter, transport, communication, entertainment, cosmetics and medical expenses have to be met. Considering the cost of living prevailing at present, this Court directs the respondent/husband to pay a sum of Rs. 8,000/- (Rupees Eight thousand only) per month from the date of interim maintenance petition in C.M.P. No. 192 of 2004 in M.C. No. 8 of 1990, dated 17.06.2004. Therefore, this Court directs the husband to pay the arrears of maintenance within three months from the date of receipt of this order to the petitioner/wife. Thereafter, the respondent/husband shall pay a sum of Rs. 8,000/-(Rupees Eight thousand only) per month as maintenance regularly, on or before 5th of every succeeding English calendar month, as it is found to be appropriate in the instant case.

In the result, the above revision in Crl. R.C. No. 417 of 2011 filed by the wife is partly allowed and the revision in Crl. R.C. No. 491 of 2011 filed by the husband is dismissed. Consequently, the order passed in C.M.P. No. 192 of 2004 in M.C. No. 8 of 1990, on the file of Family Court, Salem, dated 20.12.2010 is modified. Connected miscellaneous petitions are closed. Accordingly ordered.