

(2009) 07 MAD CK 0462

Madras High Court

Case No: Criminal R.C. No. 268 of 2007 and M.P. No's. 1 and 3 of 2007

Kalimuthu

APPELLANT

Vs

Saraswathy and
Parthipan minor rep.
by his mother and
next friend
Sarasvathy

RESPONDENT

Date of Decision: July 30, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 401

Citation: (2010) 1 LW(Cri) 555

Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Advocate: No appearance, for the Appellant; C. Kulanthaivelu, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G. Rajasuria, J.

Animadverting upon the order dated 09.11.2006 passed by the learned District Munsif cum Judicial Magistrate, Perundurai in M.C. No. 5 of 2005, this criminal revision is focussed.

2. An epitome and the long and short of the relevant facts, which are absolutely necessary for the disposal of this criminal revision could succinctly and precisely be set out thus:

(i) The Respondents herein filed M.C. No. 5 of 2005 before the learned District Munsif cum Judicial Magistrate, Perundurai seeking maintenance as against the revision Petitioner u/s 125 of the Code of Criminal Procedure. Inasmuch as the

revision Petitioner resisted the claim, the enquiry was conducted.

(ii) During enquiry, on the side of the Petitioner, the Petitioner/wife examined herself as P.W.I and Exs.P1 to P4 were marked. On the Respondent's side, R. Ws.1 and 2 were examined and Exs.R1 and R2 were marked.

(iii) Ultimately, the lower court awarded maintenance in a sum of Rs. 500/- per month payable by the revision Petitioner in favour of each of the Respondents herein.

(iv) Challenging and impugning, such awarding of maintenance in favour of the Respondents herein, this revision has been filed on various grounds, the pith and marrow of them would run thus:

(a) The HMOP filed by the revision Petitioner as against the first Respondent would indicate and display that the revision Petitioner was not at fault; but it was the first Respondent/wife who failed to resume co-habitation with him. As such the learned Magistrate mis-understood the entire facts and simply awarded maintenance.

(b) There is no reason spelt out in me judgment for having fixed such quantum of maintenance.

3. Despite printing the name of the learned Counsel for the Petitioner, no one appeared and this is coming before this Court for the fifth time. Hence, I proceed to decide the matter on merits from the available materials on record.

4. Heard the learned Counsel appearing for the Respondents.

5. The points for consideration are as to:

1. Whether, there is any perversity or non-application of law in awarding maintenance by the lower court, in favour of the Respondents herein payable by the revision Petitioner and

2. Whether the quantum of maintenance awarded is reasonable or not?

6. Admittedly, the relationship between the revision Petitioner and the Respondent is an admitted one. The revision Petitioner and R1 got married and during the wedlock, R2 was born. The very fact that the revision Petitioner has chosen to file HMOP for restitution of conjugal rights would speak volumes that the first Respondent was not at fault. If really, the first Respondent was having blame worthy conduct, the revision Petitioner would not have gone to the extent of filing such an application for restitution of conjugal rights. The trial court after considering the pro et contra and also the oral evidence on either side, arrived at the conclusion that inasmuch as the wife was tortured by the husband, the rift in the matrimonial relationship crept in. The Magistrate court is competent to arrive at a conclusion based on factual evidence.

7. At this juncture, I would like to recollect and call-up the following decisions of the Hon"ble Apex Court:

(i) [Bindeshwari Prasad Singh @ B.P. Singh and Others Vs. State of Bihar \(Now Jharkhand\) and Another](#), .; an excerpt from it would run thus:

13. The instant case is not one where any such illegality was committed by the trial court. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has repeatedly been held that the High Court should not reappreciate the evidence to reach a finding different from the trial court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted.

14. We are, therefore, satisfied that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction u/s 401 of the Code of Criminal Procedure against a judgment of acquittal. We cannot say that the judgment of the trial court in the instant case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself.

(ii) 2005 SCC 276 -Sathyajit Banerjee and Ors. v. State of W.B. and Ors., an excerpt from it would run thus:

22. The cases cited by the learned Counsel show the settled legal position that the revisional jurisdiction, at the instance of the complainant, has to be exercised by the High Court only in very exceptional cases where the High Court finds defect of procedure or manifest error of law resulting in flagrant miscarriage of justice.

As such, I could see no perversity or non-application of law in interpreting the evidence analysed by the learned Magistrate as he in his judgment elaborately discussed the factual position and believed the version of PW1, warranting no interference by this Court. I am also of the firm view that u/s 125 Code of Criminal Procedure, only summary proceeding is contemplated and in that larger issues relating to responsibility of one individual in one way or other in respect of rift in matrimonial relationship, cannot be adjudged and it is for the matrimonial court to take a decision on that.

8. Accordingly, no interference by this Court, with the finding of fact, is warranted in this revision.

9.1 am surprised to see that even in the year 2006 the learned Magistrate thought that a sum of Rs. 500/- per month would be sufficient maintenance for each of the

Respondents herein to maintain themselves and one cannot expect the seekers of maintenance to run from pillar to post to gather evidence about the financial wherewithal of the person liable to pay maintenance.

10. It is a common or garden principle that a male is expected to toil and moil like anything and also to strain every nerve to see that he is earning and providing succor in the form of maintenance to his wife and child. Accordingly, the awarding of a sum of Rs. 500/- per month each in favour of the Respondents herein even by phantasmagorical thoughts cannot be described as excessive or exorbitant.

11. In the result, I could see no perversity or non-application of mind on the part of the lower court in awarding maintenance, warranting interference by this Court. Accordingly, the revision fails and the same is dismissed. Consequently, the connected miscellaneous petitions are closed.