

**IN THE COURT OF THE ADDITIONAL DISTRICT & SESSIONS JUDGE
VIRUDHUNAGAR**

Present: **Tmt. S.D.PARIMALA, M.L.,**
Additional District and Sessions Judge,
Virudhunagar.

Wednesday, the 4th day of July, 2018

Criminal Revision Petition No. 1/2017

Name of the trial/lower court	: Judicial Magistrate Court Aruppukottai
Number of the case in trial/lower court	: M.C.No.23/2014
Number of the Crl. Revision Petition	: Cr.R.P.No.1/2017
Number in Principal District & Sessions Court	: Cr.R.P.No.1/2017
Revision Petitioner/Respondent	: P.Jayachandran
Revision Respondents/Petitioners	: J.Jeya Rani and 2 others
Date of presentation of Revision Petition	: 23.12.2016
Date of filing of Revision Petition	: 01.02.2017
When notice was given to the Revision Petitioner for his appearance in court	: 20.02.2017
Date fixed for the appearance of the Revision Petitioner	: 01.03.2017
Date of final Hearing	: 03.07.2018
Date of Judgment	: 04.07.2018

This Criminal Revision Petition coming on 03.07.2018 for final hearing before me in the presence of Mr.P.Arjunan, B.A.,B.L., Learned Counsel for the

Revision Respondents/Petitioners, and the Revision Petitioner/Respondent having been called absent, and Mr.K.Seenivasan, B.A.,B.L., Learned Advocate/Amicus Curiae having been heard, and upon considering all material records in this case and hearing the arguments on both sides, and having stood over till this day for consideration, and this court doth deliver the following

ORDER

Challenging the order passed by the learned Judicial Magistrate, Aruppukottai, hereinafter referred to as 'the trial court' for the sake of brevity, in MC No.29/2014, a petition filed by the Revision Respondents/Petitioners/Mother and Sons under S.125 CrPC, hereinafter referred to as 'the Code' for the sake of convenience, against the Revision Petitioner/Respondent/Father which has ended in favour of the Revision Respondents/Petitioners/Mother and Sons with an order granting maintenance.

For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking before the trial court.

01. Case of the Petitioners/Mother and Sons in the Trial Court

On 16.07.1997 the marriage was solemnized between the 1st petitioner and the respondent herein in Arulmigu Thirumeninathaswamy Kovil at Thiruchuli with the presence and consent of the elders of both sides as per Hindu rites. At the time

of marriage, 3 sovereign gold jewel, Rs.10,000/- cash, household articles and bureau worth Rs.10,000/- were given as dowry to the respondent. After the marriage, for the period of one and half year, they were living in a separate house at Aruppukottai with joy. Due to the above wedlock, on 01.01.1999 one Satheesh, a male child was born. At that time, all expenses for delivery have done by the parents of the 1st petitioner. At that time of pregnancy, the respondent had not done any help to the 1st petitioner and the child. After 2 or 3 months from the birth of the above child, the trend of the respondent had been changed. He became as slavery for unnecessary habits. He had not given his salary to the 1st petitioner. Then on 08.08.2003 Santhosh, the second male child was born. On the instructions and advice of the elders, the respondent came to see the child. Whenever the 1st petitioner asking the salary of the respondent, he had ill-treated the 1st petitioner. However, the 1st petitioner was living depend upon the respondent. The respondent had taken out the 1st petitioner from the matrimonial house demanding Rs.1,00,000/- as further dowry. The respondent is wantonly deserted the petitioners and not maintained them. However the 1st petitioner was ready to live with unison with the respondent, he refused to live together with the petitioners. Hence, the 1st petitioner had issued legal notice on 30.04.2014 called for living together with the respondent. He received the same and sent reply notice on 06.05.2014. After that, the 1st petitioner had issued re-joinder notice on 16.05.2014. The respondent is working as mechanic and getting Rs.15,000/- per

month and then he is earning at Rs.30,000/- per month through working as mechanic separately. He possessed four tiled house at Periyar Nagar, Aruppukottai worth about Rs.20,00,000/-. Through the tenancy of the house he is earning Rs.4,000/- per month. However, the respondent has wantonly deserted the petitioners. 2nd petitioner studying in 10th standard and the 3rd petitioner studying in 5th standard at Aruppukottai. The respondent is responsible for maintaining the petitioners at the status of the husband of the 1st petitioner and the father of the petitioners 2 and 3. Therefore, the respondent to be directed to give the petitioners as maintenance Rs.10,000/- each per month. Hence, the petitioners have come forward with this petition.

02. Case of the Respondent/Father in the Trial Court

The marriage and the date of marriage are true and the manner of the marriage and other things are false. In fact, the 1st petitioner and the respondent have had love affairs. Marriage was solemnized without the knowledge of the parents of the respondent. But, the marriage was held in the presence and consent of the elders on both sides. Since the marriage was love marriage, the respondent had not get any dowry. The mother of the respondent died on 29.01.2005. The 1st petitioner was not permitted the respondent to participate in the death ceremony of the mother of the respondent. First child was born in Government Hospital by normal delivery. The expenses of the above delivery of child was borne by the respondent and also the expenses for the 2nd child was also borne by this

respondent to the tune upto Rs.2,50,000/-. The respondent had spent all income to his wife and his children. The 1st petitioner is working as a part time job in Sakasra Beauty Parlour, South Street, Aruppukottai and earning Rs.10,000/- per month and she is also stitching the dresses in the house and earning upto Rs.15,000/-. So, she is capable to maintain herself and her children. The respondent is living and is maintaining his aged father by his monthly salary of Rs.6,000/-. Hence, the petition may be dismissed.

03. Oral and Documentary Evidence in the Trial Court

The 1st petitioner/mother has examined herself as PW1 and no document has been marked. Per contra, there is no evidence, either oral or documentary, on the side of the respondent/father.

04. Findings and Result of the Trial Court

After due enquiry, the trial court has passed an order directing the respondent/father to pay the petitioners/mother and sons a sum of Rs.3,000/- each per month, totally a sum of Rs.9,000/- per month, as monthly allowance for their maintenance. Challenging such order/award of maintenance, the respondent/father has preferred this criminal revision.

05. Heard the learned amicus curie who has been appointed for the reason that the revision petitioner/respondent/father, despite sufficient opportunities, has not chosen to appear before this court and to address his case.

06. Heard the learned counsel for the revision respondents/petitioners/mother and sons.

07. Points for Determination

On careful consideration of the revision petition, the order of the trial court, the petition and the counter filed in the trial court, the oral and documentary evidence, and the submissions so made, this court frames the following point for determination.

Whether the trial court is not correct in passing an order directing the revision petitioner/respondent/father to pay the petitioners/mother and sons a sum of Rs.3,000/- each per month, totally a sum of Rs.9,000/- per month, as monthly allowance for their maintenance?

08. The Point

(1) As mandated in S.125 CrPC, the essential ingredients for the grant of an order of maintenance, with reference to this case on hand, are

- (a) that the revision 1st respondent/1st petitioner must be the wife of the respondent,
- (b) that the revision 2nd and 3rd respondent/ 2nd and 3rd petitioners must be the legitimate minor children of the respondent,
- (c) that the respondent, despite sufficient means, should have neglected or refused to maintain the petitioners and that
- (d) that the petitioners must be unable to maintain themselves.

In this case on hand, there is no dispute as to the facts that the 1st petitioner is the

wife of the respondent, that the 2nd and 3rd petitioners are the legitimate minor children of the respondent and that the 1st petitioner, along with the 2nd and 3rd petitioners, is living in a house at Aruppukottai without the help of the respondent. Further, it is not the specific case of the respondent either in his counter statement or in his evidence that the petitioners have sufficient means to maintain themselves. In so far as the sufficient means of the respondent is concerned, the 1st revision respondent/wife is the housewife and the 2nd and 3rd revision respondents/2nd and 3rd minor sons are school going student, they are unable to maintain themselves. It is admitted by the revision petitioner/respondent that he is working as a mechanic in Meenambigai Bus Company. Further, the revision petitioner/respondent that it is the duty of the husband to maintain his wife and children. In so far as the negligence or refusal on the part of the revision petitioner/respondent/husband is concerned, it is the admitted fact that both are living separately from 04.02.2014 itself. Further, the 1st revision respondent/the 1st petitioner had filed a case in HMOP No.67/2014 for restitution of conjugal rights and the same was allowed by the learned Subordinate Judge, Aruppukottai on 12.11.2014. Though the order was passed to live together with the wife, the revision petitioner/respondent/husband has not taken any steps to live together with his wife and children and he is not interest in living with his wife and children. In this regard, the following passage from the cross examination of RW1, the revision petitioner/respondent, is extracted hereunder:

“எனது மனைவி மற்றும் மகன்கள் தற்போது எந்த விலாசத்தில் குடியிருக்கிறார்கள் என்று எனக்குத் தெரியாது. நான் தற்போது க.எண்.67, அம்பேத்கார் தெரு, புளியம்பட்டி, காந்தி மைதானம், அருப்புக்கோட்டை எனும் ஊரில் குடியிருந்து வருகிறேன். நான் தற்போது மீனாம்பிகை பஸ் கம்பெனியில் மெக்கானிக்காக வேலைபார்த்து வருகிறேன். நான் சுமார் 12 ஆண்டு காலமாக மெக்கானிக்காக வேலைபார்த்து வருகிறேன்.”

“நான் 4.2.14ம் தேதியில் இருந்து எனது மனைவியைப் பிரிந்து வாழ்ந்து வருகிறேன். அந்தத் தேதியிலிருந்து நான் எனது மனைவி மக்களுக்கு எந்தவித உதவியும் செய்திருக்கவில்லை என்றால் சரிதான்.”

“நான் மனுதாரரைக் கணவர் என்ற முறையிலும், தகப்பனார் என்ற முறையிலும் பராமரிக்கக் கடமைப்பட்டவர் என்றால் சரிதான்.”

It shows that the revision petitioner/husband voluntarily deserted his wife without any reasonable cause. Therefore, having regard to the such facts and circumstances of aforesaid, this court is of the considered view that the revision respondents/petitioners 1 to 3 are unable to maintain themselves and the revision petitioner/respondent having sufficient means in hand he has neglected and refused to maintain the revision respondents/wife and children. Hence, this court holds that the trial court is correct the revision petitioner/respondent has neglected and refused to maintain his wife and children and this point is answered accordingly.

In the light of the foregoing discussions, this court holds that the trial court is correct in passing an order directing the revision petitioner/respondent/father to pay the revision respondents/petitioners/mother and sons a sum of Rs.3,000/- each

as monthly allowance for their maintenance, and this point is answered accordingly, against the revision petitioner/respondent/father.

In the result,

(a) that this criminal revision petition is hereby dismissed, and

(b) that the order of the trial court, the learned Judicial Magistrate,

Aruppukottai, directing the revision petitioner/respondent/father to pay the revision respondents/petitioners/mother and sons a sum of Rs.3,000/- each as monthly allowance for their maintenance, is hereby confirmed.

Dictated to the steno-typist, transcribed and typed by him, corrected and pronounced by me in open court, on this the 4th day of July, 2018.

Additional District and Session Judge
Virudhunagar

Copy to:
The Judicial Magistrate,
Aruppukottai.

Addl.Dist.&Sessions Court,
Virudhunagar.

CrRP No.1/2017

ORDER

Dated :: 04.07.2018.
