

Crl.R.C.(MD).No.1260 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.04.2025

PRONOUNCED ON :20.06.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1260 of 2023

T.Sugumar

... Petitioner/Respondent

Vs.

K.Rajeshwari

: Respondent/Petitioner

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of the Code of Criminal Procedure to call for the records pertaining to the order on the file of the learned Judicial Magistrate, Uthamapalayam in M.C.No.7 of 2019, dated 17.08.2022 and set aside the same.

For Petitioner : Mr.Ramanathan

For Respondent : Mr.V.Kishore Kumar



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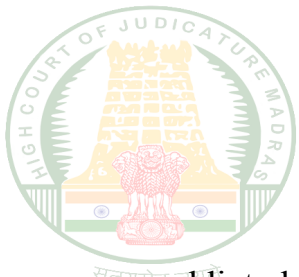
ORDER

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This Criminal Revision is directed against the order passed in M.C.No.7 of 2019, dated 17.08.2022, on the file of the Court of Judicial Magistrate, Uthamapalayam, in granting maintenance.

2. It is not in dispute that the marriage between the petitioner and the respondent was solemnized on 22.11.2009 as per the Hindu rites and customs and due to their wedlock, they were blessed with a female child Sushmita, born on 13.01.2011 and that subsequently there arose some misunderstanding and issues between them and are living separately.

3. As usual in matrimonial proceedings, the revision petitioner/husband and the respondent/wife have made allegations and counter allegations against each other. It is not in dispute that the petitioner was working in Saudi Arabia for some period and thereafter returned to the native place. It is also not in dispute that the respondent is working as an Art teacher from 07.03.2012 in a Government School, E.Pudupatty. The respondent/wife alleging that the petitioner and her parents had demanded dowry since the marriage and caused harassment and cruelty, that the petitioner after returning from Saudi Arabia, was



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addicted to Alcohol and smoking and had developed illicit affairs with so many women and refused to go abroad again, that the petitioner by himself creating some messages in the respondent's cell phone and raising false and frivolous allegations of adultery, filed divorce petition in H.M.O.P.No.294 of 2018, on the file of the Family Court, Dindigul and that the petitioner has completely neglected the respondent and her minor child and refused to maintain them, has filed the maintenance claim under Section 125 Cr.P.C., in M.C.No.7 of 2019, on the file of the Court of the Judicial Magistrate, Uthamapalayam.

4. The petitioner/husband has filed counter statement disputing the respondent's averments and further stated that when the petitioner was working in Saudi Arabia, the respondent/wife had illicit relationship with her colleague Kannan and the said Kannan had gone to the extent of assaulting the respondent in an occasion and the same was admitted by the respondent, that the respondent thereafter entered into an illicit relationship with one Gopinath, that the said Gopinath's wife and her parents came to the house of the petitioner on 27.11.2018 and quarrelled with the respondent with regard to the illicit affairs, that the respondent had left the matrimonial home voluntarily on 27.11.2018 itself, that their female child is under the care and custody of the petitioner and



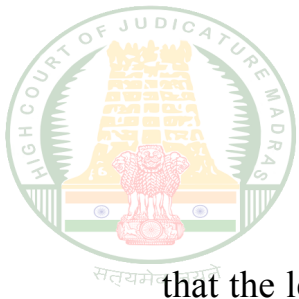
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that since the respondent has been living separately on her own and living in adultery, she is not entitled to claim maintenance.

5. During trial, the respondent examined herself as P.W.1 and exhibited 8 documents as Exs.P.1 to P.18. The revision petitioner examined himself as R.W.1 and exhibited 15 documents as Exs.R.1 to R.15. The learned Judicial Magistrate, upon considering the evidence and on hearing the arguments of both sides, has passed the impugned order dated 17.08.2022 directing the revision petitioner to pay monthly maintenance at Rs.7,000/- to the respondent. Aggrieved by the impugned order, the present revision came to be filed.

6. It is not in dispute that the revision petitioner has filed a divorce petition in H.M.O.P.No.294 of 2018 on the file of the Family Court, Dindigul, and that the respondent has filed a petition in H.M.O.P.No.110 of 2023 claiming restitution of conjugal rights, on the file of the Subordinate Court, Katpadi. It is also not in dispute that the respondent has initiated proceedings under the Domestic Violence Act in D.V.C.No.15 of 2019 and the same was pending on the file of the Court of Judicial Magistrate, Uthamapalayam. It is pertinent to note

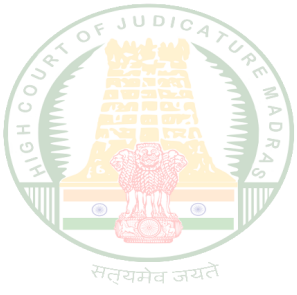


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that the learned Magistrate, after conducting enquiry in D.V.C., proceedings, has passed an order dated 17.08.2022 dismissing the said petition.

7. As rightly contended by the learned Counsel on either side, since the divorce petition as well as the petition for restitution of conjugal rights are pending, whether the respondent is guilty of adultery or whether the revision petitioner is guilty of committing cruelty, are the aspects that cannot be gone into in the maintenance proceedings. The learned Counsel for the revision petitioner would contend that both parties entered into compromise wherein the petitioner has agreed to pay Rs.8,65,000/- and the respondent has agreed to withdraw the maintenance case and D.V.C., case, but the respondent has subsequently retracted and refused to accept the compromise. Admittedly, it is not the case of the petitioner that the respondent signed a compromise memo or agreed to it in Court. Moreover, the fact remains that the maintenance case as well as the D.V.C., case were already disposed of. Hence, the question of considering the alleged joint compromise does not arise at all. But as rightly pointed out by the learned Counsel for the revision petitioner, the learned Magistrate in the impugned order, awards maintenance solely based on the husband's obligation, without considering valid reason for separation.



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8. At this juncture, it is necessary to refer Section 125(4) Cr.P.C.

“No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

9. Notably, the impugned order reflects the learned Magistrate's observation that the petitioner's evidence failed to prove the alleged illicit affairs of the respondent. Significantly, the same Magistrate, who adjudicated the D.V.C. case, found that the respondent was not subjected to violence, was living separately by choice, and that the petitioner's grievance stemmed from the respondent's alleged adultery. The relevant findings are extracted below for better appreciation;

“..... ம.சா.1 அளித்துள்ள ுமற்படி சாட்சியத்தின் படி மனுதாரருக்கு எந்த துன்புறுத்தலும்இ எதிர்மனுதாரரால் ஏற்பட்டதாக தெரியவில்லை. மாறாகஇ மனுதாரர் தனது விருப்பப்படி 1ம் எதிர்மனுதாரரை விட்டு பிரிந்து வாழ்ந்து வருகிறார். அதுபால் மனுதாரருக்கு தவறான தொடர்பு உள்ளது என்று 1 – ம் எதிர்மனுதாரர் பிரிந்து வாழ்ந்து வருகிறார் என்பது தெளிவாகிறது.”



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Based on these findings, the learned Magistrate dismissed the D.V.C., complaint.

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10. Admittedly, the respondent has not preferred any appeal challenging the dismissal of the case in D.V.C.No.15 of 2019. As previously highlighted, the same learned Magistrate's findings in both cases appear contradictory. At this juncture, it is necessary to refer the cross-examination evidence of the respondent.

“மனும் தனது குறுக்கு விசாரணையில் 27.11.2018ம் துதிக்கு மின்பு எனக்கும் எனது கணவருக்கும் எந்த ஒரு குடும்ப உறவுமில்லை. பச்சுவார்த்தையும் கிடையாது என்று சொன்னால் சரிதான். நான் எனது பெற்றார் வீட்டிற்கு வந்துவிட்டேன். 27.11.2018 – ம் துதி தான் மற்படி சம்பவம் நடந்தது என்றால் சரிதான். காரியக்கும் எனக்கும் தகாத உறவு நேர்ப்பதை தெரிந்துதான் காரியின் மனைவி இ மற்றும் அவருடைய பெற்றார்கள் வந்து சண்டைபாட்டார்கள் என்று சொன்னால் அந்த காரணத்திற்காகத்தான் வந்தார்கள் என்பது எனக்குத் தெரியாது..... எனது கணவர் தகவல் கொடுத்த மறுநாள் எனது பெற்றார்கள் வந்து என்னை அழைத்துக்கொண்டு எனது குழந்தையை பள்ளிக்கு அனுப்பி வைத்தார்கள் என்றால் சரிதான். ஆனால் எனது கணவர் எனது பெற்றாருக்கு தகவல் தெரிவிக்கவில்லை. எனது பெரியம்மாதான் தகவல் தெரிவித்தார்.”

11. The respondent's departure from the matrimonial home on 27.11.2018,



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following the alleged incident, is noteworthy. As established in law, a wife's refusal to cohabit may be justified if based on reasonable grounds.

12. In the present case, the learned Magistrate failed to determine whether the respondent had valid reasons for living separately. The impugned order notes the respondent did not assign reasons for separation but grants maintenance solely based on the husband's obligation to maintain his wife. This approach overlooks Section 125(4) Cr.P.C. Given the circumstances and absence of valid reasons for leaving the matrimonial home, coupled with the respondent's admissions, this Court finds the respondent ineligible for maintenance. Consequently, the impugned order awarding maintenance is unsustainable and liable to be set aside.

13. In the result, the Criminal Revision Case is allowed and the impugned order dated 17.08.2022, passed in M.C.No.7 of 2019, on the file of the learned Judicial Magistrate, Uthamapalayam is set aside.

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NCC : Yes/No



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Index : Yes/No

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To

The Judicial Magistrate Court, Uthamapalayam.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in

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