

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.04.2017

CORAM
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.15899 of 2010
and
M.P.Nos.1 and 2 of 2010

S.Thirumalaisamy

.. Petitioner

Vs

1. T.Selvi

2. Minor Kamatchiraj ... Respondents
rep. By mother and natural guardian
T.Selvi (first respondent)

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to set aside the order dated 03.12.2009 passed by the learned I Additional District and Sessions Judge, Coimbatore in Crl.R.C.No.29 of 2009 confirming the order dated 03.07.2008 passed by the learned Judicial Magistrate No.II, Udumalpet in M.C.No.12 of 2007 directing the petitioner to pay a sum of Rs.1,000/- to the first respondent and Rs.750/- to the second respondent.

For Petitioner : Mr.Manoj Sreevalsan

For Respondents : Mr.R.Nalliyappan

ORDER

This Criminal Original Petition has been filed by the petitioner to set aside the order dated 03.12.2009 passed by the learned I Additional District and Sessions Judge, Coimbatore in Crl.R.C.No.29 of 2009 confirming the order dated 03.07.2008 passed by the learned Judicial Magistrate II, Udumalpet in M.C.No.12 of 2007 directing the petitioner to pay a sum of Rs.1,000/- to the first respondent and Rs.750/- to the second respondent.

2. The facts in a nutshell are as under: The petitioner married the first respondent on 20.01.2002 and from the wedlock a male child was born on 10.03.2003. Differences between the spouses arouse on various grounds and it is alleged that the first respondent has been driven out of the matrimonial house

demanding dowry and was tortured. The respondents alleging that they had been neglected by the petitioner filed a maintenance claim, claiming a sum of Rs.3,000/- each for the first respondent wife and her minor child, second respondent.

3. The petitioner husband denied the allegations of demand of dowry and torture, while admitting the marriage. The petitioner alleged that the first respondent neglected him and was living with her parents and despite decree of restitution of conjugal rights, the first respondent never chose to live with the petitioner and that constrained him to file the a petition seeking divorce.

4. The trial Court on the basis of material evidence, awarded a sum of Rs.1000/- towards maintenance to the first respondent and Rs.750/- to the second respondent and directed the petitioner to deposit the arrears within three months.

5. Assailing the said order, the petitioner filed a revision before the learned I Additional District and Sessions Judge, Coimbatore, who, by order dated 03.12.2009 passed in Crl.R.P.No.29 of 2009, dismissed the revision.

6. Calling in question the said order, the present original petition is filed for the relief stated supra.

7. The learned counsel appearing on behalf of the petitioner submits that the petitioner had obtained an order against the first respondent for restitution of conjugal rights, but the first respondent had never chosen to comply with the said order and, therefore, the Court below ought not to have directed the petitioner to pay maintenance. He added that inasmuch as the first respondent had deserted him without any valid and sufficient cause, the claim of maintenance made by the first respondent is hit by the third proviso to Section 125 of the Criminal Procedure Code.

8. Per contra, the learned counsel for the respondents reiterated the reasons that weighed with the Courts below and prayed for dismissal of this original petition.

9. I heard Mr.Manoj Sreevalsan, learned counsel for the petitioner and Mr.R.Nalliyappan, learned counsel for the respondents and perused the documents available on record.

10. It is admitted fact that the petitioner married the first respondent. The concept of maintenance in India is covered under Section 125 of the Code as well as under personal laws. The maintenance includes entitlement to food, clothing and shelter to the wife, children and parents. This is provided as a measure of social justice and natural duty of a husband to

maintain his wife and children when they are unable to maintain themselves.

11. In the instant case, the Courts below have found that wife was repeatedly tortured and abused by the husband and that necessitated her to live at her parent's home and, therefore, it does not lie in the mouth of the petitioner to contend that since the first respondent is living in her parent's home, she is not entitled to maintenance. Further, the Court below found that the petitioner is owning a weaving unit. It is the bounden duty of the petitioner, who is an able-bodied man, capable of earning and has sufficient means, to maintain his wife and child.

12. Once the first respondent wife has made a specific averment with regard to capacity of the petitioner, then onus shifts upon the petitioner husband to prove that he does not have sufficient means to provide maintenance. The petitioner has not rebutted the averments and this is a case of bare denial. That apart, there is no evidence on record to prove that the first respondent-wife has any independent source of income.

13. For the foregoing reasons, this Court is of the firm view that the impugned order dated 03.12.2009 passed by the learned I Additional District and Sessions Judge, Coimbatore in CrI.R.C.No.29 of 2009 confirming the order dated 03.07.2008 passed by the learned Judicial Magistrate No.II, Udumalpet in M.C.No.12 of 2007 is neither in excess of jurisdiction nor does the same suffer from any material irregularity.

14. In the result, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

सत्यमेव जयते

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Sub Assistant Registrar

vs

To

1.The I Additional District and Sessions Judge,
Coimbatore.

2.The Judicial Magistrate No.II,
Udumalpet.

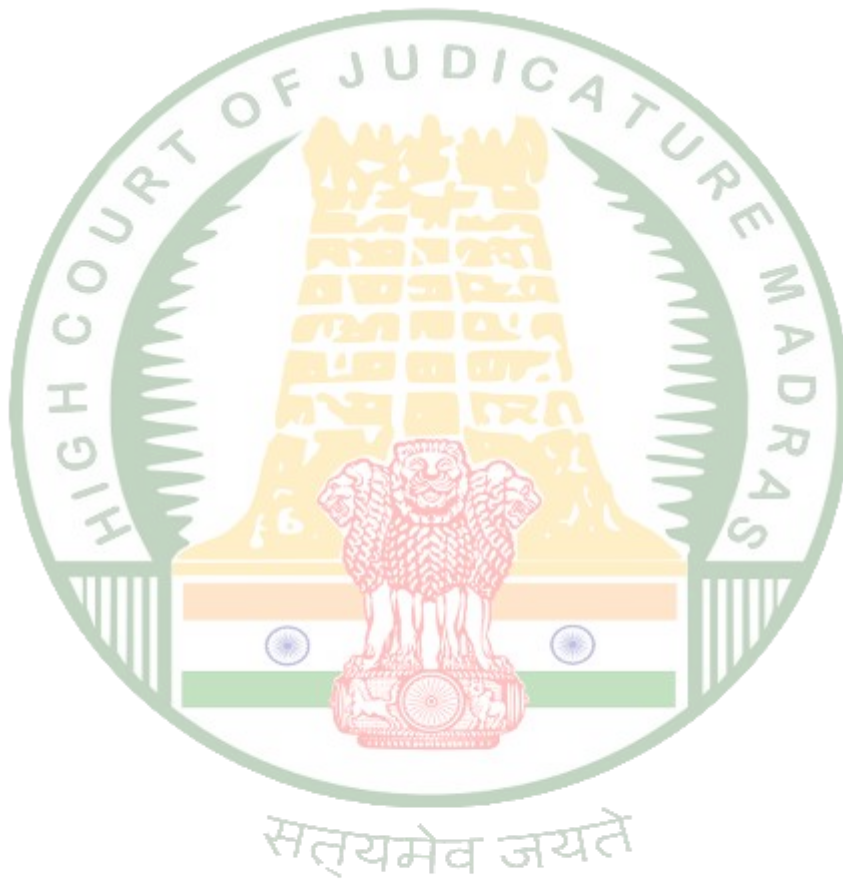
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+1cc to Mr. Manoj Sreevalsan, Advocate, S.R.No.
+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.20433

CRL.O.P.No.15899 of 2010
and
M.P.Nos.1 and 2 of 2010

SJ(CO)

rrs 28/11/2018



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