



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.08.2018
PRONOUNCED ON : 05.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.1404 of 2011

1.P.Vasanthi
2.Minor Brinda
3.Minor Ajay Akilaendra ... Petitioners / Petitioners
(Petitioners 2 and 3 are represented
by their mother and next friend Vasanthi - first petitioner)

-Vs-

V.Ramkumar ... Respondent / Respondent

PRAYER: Criminal Revision Case is filed under Section 19(4) of the Family Courts Act, 1984 as amended by Act 59 of 1981, r/w Sections 397 and 407 CrI.P.C., 1973, to call for the records comprised in M.C.No.33 of 2004, on the file of the learned Judge, Family Court, Salem and to set aside the order dated 27.05.2011 in M.C.No.33 of 2004, refusing to entertain the monthly maintenance claim of Rs.6,000/- of the wife-first petitioner, and consequently, direct the respondent-husband to the wife-first petitioner at the rate of Rs.6,000/- from the date of petition and further to enhance the maintenance of the children-2nd and 3rd petitioners from Rs.1,500/- to Rs.2,000/- per month from 14.06.2004 to 27.06.2011 and direct the respondent to pay the arrears of Rs.500/- per month from the date of petition to the date of judgment (14.06.2004 to 27.05.2011).

For Petitioners : Mr.N.A.Ravindran

For Respondent : Mr.K.Muthamil Raja

ORDER

This Criminal Revision Case is filed by the petitioners against the order passed by the learned Judge, Family Court, Salem, in M.C.No.33 of 2004, dated 27.05.2011.

2.The first petitioner herein is the wife and the petitioners 2 and 3 are the children of the respondent herein. The petitioners herein have filed a petition in M.C.No.33 of



2004 before the learned Judge, Family Court, Salem, seeking maintenance and the said petition was partly allowed by the learned Judge, Family Court, Salem, granting maintenance to the second and third petitioners herein and rejecting the claim of maintenance to the first petitioner / wife on the ground that she has voluntarily left the matrimonial home. As against the said order, the present criminal revision case has been filed.

3.The learned counsel appearing for the revision petitioners contended that the respondent herein / husband of the first petitioner has filed a petition in F.C.O.P.No.263 of 2005 seeking for divorce on the ground of adultery and the first petitioner herein / wife has filed a petition in M.C.No.33 of 2004 for maintenance and in both the cases, simultaneous trial was conducted and judgment was delivered on the same day. In F.C.O.P.No.263 of 2005 filed by the husband for divorce on the ground of adultery, the plea of adultery was rejected, however, divorce was granted. As against the said order, the first petitioner / wife has filed a petition in C.M.A.No.136 of 2011 and the same is pending before this Court. The learned counsel appearing for the revision petitioners further contended that the finding arrived at by the learned Judge, Family Court, Salem, is not inconsonance with the evidence and hence, seeks to set aside the order passed by the trial Court.

4.Per contra, the learned counsel appearing for the respondent would contend that based upon Ex.P.3, complaint and Ex.P.5, Advocate notice, the learned Judge, Family Court, Salem, has come to the conclusion that the first petitioner herein / wife has left the matrimonial home on her own wish and hence, rejected the claim of maintenance to the wife.

5.Based upon the evidence of P.W.1 and also Ex.R.1 series salary certificates of Ramkumar / husband, the Family Court, has awarded maintenance only in respect of minors / the petitioners 2 and 3 herein not for the wife / first petitioner herein. It is seen from Ex.P.3, complaint given by the wife against the respondent / husband that the husband assaulted her and her family members, therefore, she went away from the home and never returned even after five days.

6.Based upon the cross-examination, the Family Court has observed that the allegations levelled by the wife that she was necked out of the house by the respondent and also the removal of Thirumangalyam are subsequent embellishments found in the Lawyer notice issued after four days of Ex.P.3, police complaint. Based upon the admitted position and Ex.P.3, the Family Court has rightly come to the conclusion that the first revision petitioner / wife has left the matrimonial home voluntarily and before leaving matrimonial home has taken all



the belongings in predetermined manner with an intention not to return back to the matrimonial home. The trial Magistrate has rightly come to the conclusion that the wife has voluntarily deserted the respondent with no intention of returning back and without any acceptable justification for desertion and accordingly, held that she is not entitled for maintenance. Such finding based upon the factual position, does not warrant any interference.

7.In this view of the matter, the finding given by the Family Court, Salem, rejecting maintenance for the wife and giving maintenance for the minor children, in M.C.No.33 of 2004, dated 27.05.2011, is hereby confirmed. Accordingly, this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Judge, Family Court,
Salem.

2.The Additional Public Prosecutor,
Madras High Court, Madras.

+1 cc to M/s.N.A.Ravindran, Advocate Sr.No.83425

+1 cc to Mr.K.Muthamil Raja, Advocate Sr.No.83405

Order made in
CRL.R.C.No.1404 of 2011

SPD(CO)
CSL/21.01.2019