



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 17.07.2018
DELIVERED ON : 01.08.2018
CORAM :
THE HONOURABLE MRS. JUSTICE R. THARANI
Crl.R.C. (MD) Nos.429 and 923 of 2017

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Crl.R.C. (MD) No.429 of 2017:

Pugalenthirami ... Petitioner/Respondent
vs.
1.Revathi
2.Minor. Kathambari
(Rep. By through her mother 1st respondent)
... Respondents / Petitioners

Crl.R.C. (MD) No.923 of 2017:

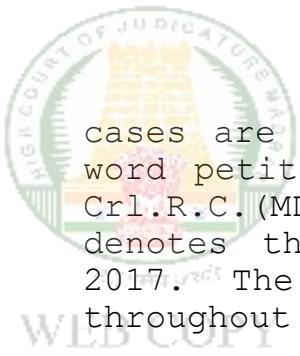
1.K.Revathy
2.Minor.P. Kathambari
(Rep. By through her mother 1st petitioner)
... Petitioners/Petitioners
vs.
Pugalenthirami ... Respondent/ Respondent

COMMON PRAYER:- Criminal Revision Petitions filed under Sections 397 r/w. 401 of the Code of Criminal Procedure, 1973, to call for the records in M.C.No.87 of 2011 dated 21.01.2016 on the file of the learned Judge, Family Court, Madurai District and set aside the same.

For Petitioner in
Crl.R.C. (MD) No.429 of 2017 : Mr.S.Rajaprabu
For Respondents in
Crl.R.C. (MD) No.429 of 2017 : Mr.M.Sarangan
For Petitioners in
Crl.R.C. (MD) No.923 of 2017 : Mr.M.Sarangan
For Respondent in
Crl.R.C. (MD) No.923 of 2017 : Mr.S.Rajaprabu

Common Order

The petitioner in Crl.R.C. (MD) No.429 of 2017 is the husband and the petitioners in Crl.R.C. (MD) No.923 of 2017 are the wife and their child respectively. Since the subject in these petitions are similar, both the petitions are taken up together and are disposed of by this common order. For the sake of convenience as both the



cases are related to each other, this Court deems it fit that the word petitioner will denote the husband who is the petitioner in Crl.R.C.(MD)No.429 of 2017 and the word first respondent will denote the wife who is the petitioner in Crl.R.C.(MD)No.923 of 2017. The child will be described as the second respondent throughout the order.

2. Heard the learned counsel on either side.

3. These petitions have been filed to set aside the order passed in M.C.No.87 of 2011 dated 21.01.2016 on the file of the learned Judge, Family Court, Madurai District.

4. The marriage between the petitioner and the first respondent was solemnized on 27.06.2002. After the marriage, they started living in Tirunagar, Madurai. On 06.01.2014, they got a female child.

5. On the side of the petitioner, it is stated that in the month of January 2004, the petitioner obtained a job in the Honda Company at Chennai and the first respondent lived with him in Chennai for two months and then she returned back to Madurai and lived with her parents. It is stated that the petitioner tried to live with the first respondent. However, irrespective of the steps taken by the petitioner, the first respondent deserted him. During 2005, the petitioner went to Malaysia and returned back after two years. Even at that time, the first respondent refused for re-union. She insisted him to sell the property at Paramakudi and to start a business at Madurai. As efforts for reunion failed, the petitioner issued a legal notice and the first respondent gave a reply notice with false allegations. Hence, the petitioner filed a petition under Section 13(1) (i-a) of Hindu Marriage Act in H.M.O.P.No.286 of 2011 on the ground of cruelty and subsequently, the first respondent filed a restitution of conjugal rights petition in H.M.O.P.No.583 of 2011. After considering both sides, the learned Judge, Family Court, Madurai allowed the divorce petition filed by the petitioner and dismissed the restitution of conjugal rights petition filed by the first respondent.

6. On the side of the petitioner, it is stated that the first respondent filed a petition for maintenance under Section 125 of Cr.P.C., before the Family Court, Madurai and without considering the petitioner side submissions, the Family Court has directed the petitioner herein to pay a sum of Rs.2,000/- (Rupees Two Thousand only) to the first respondent herein and to pay a sum of Rs.4,000/- (Rupees Four Thousand only) to the second respondent herein towards maintenance from January 2014 onwards. The petitioner herein was also directed to pay a sum of Rs.3,000/- (Rupees Three Thousand only) towards cost of expenses to the respondents herein. Against the order, the petitioner has come forward with this revision petition.



7. On the side of the first respondent, it is stated that at the time of marriage, the petitioner has promised the first respondent that they will settle at Madurai. Later he suggested to settle at Chennai. After the birth of the second respondent, the petitioner shifted the residence to Chennai. After shifting their house, the second respondent got some disability and was not able to sleep properly. The first respondent insisted the petitioner for proper treatment. But the petitioner did not consider the same and he also refused to take the child to the hospital. The first respondent informed about the child's illness to her mother, who has completed M.D. Course in Acupancher. Thereafter, she took the second respondent to Madurai for treatment.

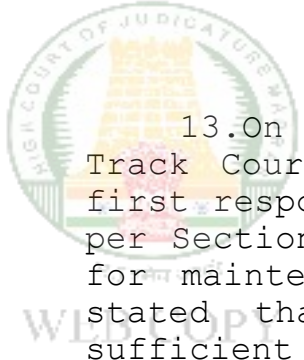
8. Then they came to know that the second respondent is suffering from mental retardation. When the petitioner came to know about the health of the second respondent, he refused to take care of her and gone abroad for two years. Thereafter, the petitioner filed a divorce petition. The first respondent is suffering to maintain the second respondent and she is unable to pay for the treatment and for the Special School expenses. The first respondent is not having any independent income. The petitioner is having immovable property at Paramakudi and he is receiving rental income. He was working in a private company and is doing real estate business and drawing more than Rs.50,000/- (Rupees Fifty Thousand only) per month.

9. The petitioner has not produced any oral and documentary evidence in the case. Considering the fluctuation of price today and needs for special child/the second respondent, the first respondent prays to consider her case and to enhance monthly maintenance amount into Rs.14,000/- (Rupees Fourteen Thousand only).

10. Records perused. The marriage between the petitioner and the first respondent is not denied and the second respondent is the child of the petitioner and the first respondent. This fact is also not denied. The petitioner is only denying the quantum of maintenance for the respondents. The first respondent has demanded an enhanced amount for the maintenance of the second respondent.

11. On the side of the first respondent, a document is filed before this Court wherein it is stated that the second respondent is studying Standard IX in the Xavier Matric Hr. Sec. School and the School fees for the first term is Rs.19,000/- (Rupees Nineteen Thousand only).

12. On the side of the first respondent, a Certificate is filed before this Court wherein it is stated that the second respondent is having learning disability dislexia and she needs special care and special education, for improving her learning and writing skills and she needs speech therapy also.



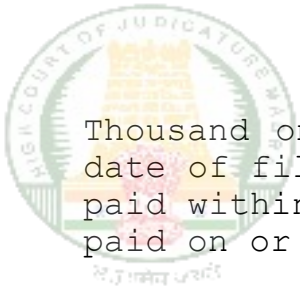
13. On the side of the petitioner, it is stated that the Fast Track Court has allowed the divorce petition on ground that the first respondent deserted her husband. It is further stated that as per Section 125(4) of Cr.P.C., the first respondent is not entitled for maintenance as she has deserted the husband. It is further stated that the first respondent is working and is getting sufficient income. No document is filed on the side of the petitioner to prove that the first respondent is getting salary. It is further stated that the petitioner was working as a Server in a hotel and he was not able to pay the maintenance and he has undergone imprisonment as per the order in Crl.R.C.(MD)No.332 of 2017 and got suspension of sentence in Crl.M.P.(MD)No.3197 of 2017.

14. On the side of the first respondent, it is stated that the petitioner refused to pay the maintenance amount, though the petitioner is having sufficient means for paying the maintenance. The second respondent was having 100 % disability at the age of three. Now she is improving due to the treatments given to her. Until her end, she needs attention, assistance and medical care. The petitioner has to pay Rs.15,000/- (Rupees Fifteen Thousand only) per month towards the fees for the special School such as speech therapy, occupational therapy and behaviour therapy are necessary for the second respondent. The second respondent has attained puberty and the responsibility of the first respondent is increasing day by day. Only because the second respondent was born with some mental illness, the petitioner has refused to live with the respondents.

15. The second respondent is a special child who needs speech therapy and behavior therapy and also needs special attention. Even a divorce wife is entitled for maintenance.

16. In such circumstances, the order of the lower Court that the petitioner herein has to pay a sum of Rs.2,000/- (Rupees Two Thousand only) to the first respondent herein towards maintenance is correct. The petitioner is having immovable properties and he is getting rental income. This fact is admitted by him. The petitioner is duty bound to take care of this family members. The second respondent being a special child, she needed special treatment. The petitioner has to prove that the first respondent is working and earning sufficient amount and she can maintain herself and the second respondent. But, he has not filed any document to prove the same. In these circumstances, this Court deems it fit to enhance the maintenance amount for the second respondent and the petitioner herein is directed to pay a sum of Rs.8,000/- (Rupees Eight Thousand only) per month towards the maintenance of the second petitioner.

17. In the result, the petition in Crl.R.C.(MD)No.429 of 2017 is dismissed and the Crl.R.C.(MD)No.923 of 2017 is partly allowed. The respondent/husband in Crl.R.C.(MD)No.923 of 2017 has to pay a sum of Rs.2,000/- (Rupees Two Thousand only) per month towards maintenance of the wife and he has to pay a sum of Rs.8,000/- (Rupees Eight



Thousand only) per month towards maintenance of the child from the date of filing of this petition. Arrears of the maintenance is to be paid within a period of three months and the monthly amount is to be paid on or before 6th of every month.

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Sd/-

Assistant Registrar(CS-II)

Sub Assistant Registrar(CS-III)

To

The Judge,
Family Court ,
Madurai.

+2CC to M/s.SARANGAN, Advocate, SR.No.77070, 77071

Cr1.R.C.(MD) Nos.429 and 923 of 2017
01.08.2018

MRN

ES/RP/SAR 3/11.08.2018/5P/4C