



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.09.2018
CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WEB COPY

CrI.R.C(MD)No.700 of 2017

1.R.Ram Victoria
2.Minor J.Diyanesh Kumaran : Petitioners/Petitioners
(Minor 2nd petitioner rep.by
through his mother and gaurdian/
1st petitioner).
Vs.

S.Jeganathan : Respondent/Respondent

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to allow the Criminal Revision Petition and set aside the order dated 25.07.2017 made in M.C.No.4 of 2015 on the file of learned District Munsif cum Judicial Magistrate, Peraiyur.

For Petitioners : Mr.PT.S.Narendravasan
For Respondent : Mr.J.Senthil Kumaraiah

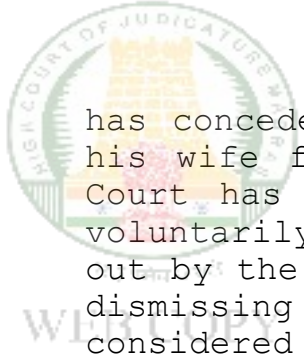
ORDER

This Criminal Revision Case is filed praying to set aside the order dated 25.07.2017 made in M.C.No.4 of 2015 on the file of learned District Munsif cum Judicial Magistrate, Peraiyur.

2.Heard the learned counsel for the petitioners and the learned counsel for the respondent.

3.This case is canvassed around the liability of the husband to maintain his wife and minor son. The petition filed by the wife for herself and on behalf of the minor son, seeking maintenance of Rs.25,000/- in toto, out of which, Rs.15,000/- for herself and Rs.10,000/- for her minor son, was dismissed by the trial Court. The Trial Court after considering the deposition of the respective parties has come to a conclusion that the first petitioner has left the matrimonial home and she has enough wherewithal to take care of herself and since she has voluntarily left the matrimonial home, she is not entitled for any maintenance and dismissed the petition. Aggrieved by that, the present criminal revision case is filed.

4.The prime point admitted in the criminal revision case is that the trial Court miserably failed to appreciate the evidence of P.W.1 and D.W.1 in proper perspective. When the respondent/ husband



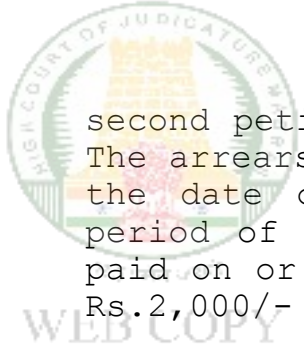
has conceded the fact that he did not take any steps to bring back his wife from her parental home after the child birth, the trial Court has erroneously concluded that it was the first petitioner voluntarily deserted the matrimonial home. Further, it is pointed out by the learned counsel appearing for the petitioners that while dismissing the maintenance petition, the trial Court has not considered about the responsibility of the father to maintain the minor child, who has been now deprived.

5. Per contra, the learned counsel appearing for the respondent would submit that the trial Court has gone into the evidence of both the parties and pointed out the falsity in the complaint regarding the demand of dowry and the reason to leave the matrimonial home.

6. The first petitioner has admitted about the matrimonial discard as early as 2012 and about the complaint given to the All Women Police Station, Andipatti against her by the respondent on 27.12.2012. They have arrived at a compromise and the same has also been admitted by her. While so, the allegation that from 2012 to 2015 she has been forced to pursue her education at the cost of her parents is a false one. The learned counsel also pointed out the admission of the first petitioner that on her request her parents came and immediately took her to the parental home. On the cumulative consideration of these candid admissions by the first petitioner, the trial Court has held that desertion is voluntary and the first petitioner is capable of making her livelihood on her own and therefore, dismissed the maintenance petition.

7. On considering the rival submission and the records, this Court is of the opinion that the observation regarding the voluntary desertion of first petitioner is substantiated and denial of maintenance of his wife is justified in the reasoning given by the trial Court. However, for the second petitioner/minor son, none of the reason is applicable for depriving the maintenance. The salary certificate furnished by the respondent indicates that he has well positioned in the HCL and total standard salary is above Rs.62,216/-. However the learned counsel for the respondent would submit that after statutory deduction and instalment towards house loan, his carry home salary is less than Rs.40,000/-. In any event, the claim of Rs.10,000/- for the second respondent is proportionated to his status and income.

8. Hence, the Criminal Revision Case is partly allowed and the order dated 25.07.2017 passed in M.C.No.4 of 2015 by the learned District Munsif cum Judicial Magistrate, Peraiyur, in respect of the minor/second petitioner is set aside. The respondent is hereby directed to pay a sum of Rs.10,000/- towards maintenance of his son/second petitioner from the date of filing of M.C.No.04 of 2015 on the file of the learned District Munsif cum Judicial Magistrate, Peraiyur i.e., from 12.02.2015. The first petitioner herein is also entitled for a sum of Rs.2,000/- towards the cost of maintaining the



second petitioner, which shall be paid from the date of this order. The arrears of maintenance at the rate of Rs.10,000/- per month from the date of filing till September 2018, shall be paid within a period of two months from today. The future maintenance shall be paid on or before 5th day of every English calendar month along with Rs.2,000/- as care taker's charge.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The District Munsif cum Judicial Magistrate,
Peraliyur.

+1CC to Mr.J.Senthil Kumaraiah, Advocate, SR.No.85389

ORDER MADE IN
Cr1.R.C(MD)No.700 of 2017
18.09.2018

CP
ES/RP/SAR 1/31.10.2018/3P/3C