

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1132 of 2012

1. Mathiyalagi

2. Minor Swetha

3. Minor Sriram

4. Minor Bharath Petitioners/Respondents

Vs.

Sundararajan Respondent/Petitioner

Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to set aside the order of acquittal dated 23.12.2011 made in Crl.RC.No.6 of 2011 passed by the learned Principal District and Sessions Judge, Ariyalur by modifying the order dated 13.08.2010 made in M.C.No.4 of 2009 on the file of the Judicial Magistrate Court, Ariyalur.

For Petitioners: Mr.C.Prabakaran

For respondent : Mr.D.Rajagopal

O R D E R

This Criminal Revision has been filed to set aside the order of acquittal dated 23.12.2011 made in Crl.RC.No.6 of 2011 passed by the learned Principal District and Sessions Judge, Ariyalur by modifying the order dated 13.08.2010 made in M.C.No.4 of 2009 on the file of the Judicial Magistrate Court, Ariyalur.

2. The respondent herein is the husband, the first petitioner is the wife and the petitioners 2 to 4 are their children. The marriage between the first petitioner and the respondent was solemnised on 08.07.2001. According to the petitioners, after the marriage, 6 months they lived happily and thereafter, the respondent used to drink alcohol and degraded their family members. Therefore, the first petitioner left the matrimonial home and residing with three children. The

respondent herein is working in the Transport Corporation and he is having sufficient means to maintain his wife and children and hence, the petitioners filed a petition in MC.No.4 of 2009 seeking maintenance before the learned Judicial Magistrate, Ariyalur. The learned Magistrate, after enquiry found that the petitioners are entitled to get maintenance and awarded a sum of Rs.1,000/- each as maintenance on 13.08.2010. Challenging the said order, the respondent/husband filed a revision in CrI.R.C.No.06 of 2011 before the learned Principal District and Sessions Judge, Ariyalur. After considering all the facts, the learned Sessions Judge found that as the first respondent therein/wife refused to live with the petitioner therein/husband, she is not entitled to get maintenance and hence, set aside the order passed by the learned Magistrate as against the first respondent/wife and confirmed the order passed by the trial Court insofar as the respondents 2 to 4/minor children. There against, the present revision has been filed by the wife and minor children.

3. The learned counsel for the petitioners would submit that the first petitioner has clearly stated the reason as to why she left the matrimonial home. The learned Magistrate rightly considered the reason stated by the first petitioner/wife and awarded a sum of Rs.1,000/-, whereas, the learned Sessions Judge failed to consider the said aspect and set aside the order passed by the learned Magistrate as regards the first petitioner, which warrants interference.

4. The learned counsel appearing for the respondent would submit that the learned Sessions Judge rightly considered the reason that the first petitioner/wife left the matrimonial home without any valid reason and she has also taken the entire articles, which were brought by her during marriage. Therefore, the learned Sessions Judge rightly set aside the order passed by the learned Magistrate does not warrant interference.

5. Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondent and also perused the entire materials available on record.

6. The relationship is not in dispute and the paternity of the children are also not in dispute. The learned counsel for the respondent submitted that the respondent/husband is only taking care of the education expenses of the children. On a reading of the entire records, it is seen that it is an admitted fact that the petitioners 2 to 4 are living with the first petitioner. The first petitioner/wife has stated in her petition in MC.No.4 of 2009 that 6 months after the marriage the respondent/husband used to consume alcohol and scold with filthy language and also degraded her family members, due to which, she

left the matrimonial home. Section 125 of Cr.P.C clearly states that if the wife leaves the matrimonial home without any valid reason, she is not entitled for maintenance. In this case, the first petitioner/wife has clearly stated as to why she has left the matrimonial home. Though the learned Magistrate rightly appreciated the evidence and awarded maintenance, the learned Sessions Judge failed to consider the reason stated by the first petitioner. This Court finds that there is perversity in the order passed by the learned Sessions Judge.

7. In the result, this Criminal Revision Case is allowed. The order dated 23.12.2011 made in CrI.RC.No.06 of 2011 passed by the learned Principal District and Sessions Judge, Ariyalur is set aside and the order dated 13.08.2010 made in M.C.No.4 of 2009 passed by the learned Judicial Magistrate, Ariyalur is restored. The respondent/husband is directed to pay the entire arrears amount to the first petitioner/wife as directed by the learned Judicial Magistrate, Ariyalur.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The Judicial Magistrate,
Ariyalur.
2. The Principal District and Sessions Judge,
Ariyalur.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.C.Prabakaran, Advocate Sr.60125

CrI.R.C.No.1132 of 2012

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srg 30/08/2019