

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1089 of 2013
and Crl.M.P.No.1 of 2013

Kannan

...Petitioner

-Vs-

1. Tamil Selvi @ Sathyavani

2. Venkatanathan (Minor)

3.Jothika (Minor)

(R2 & 3 Minors Rep by
their Guardian/Mother 1st Respondent herein)

....Respondent

Criminal Revision Case filed under Sections 397 read with
Section 401 of Cr.P.C. to set aside the order passed by the
learned Family Court, Puducherry in M.C.No.29 of 2010 dated
04.07.2013.

For Petitioner : Mr.C.P.Patabiraman

For Respondent : Notice served - No appearance

O R D E R

This Criminal Revision has been filed to set aside the
order passed by the learned Family Court, Puducherry in
M.C.No.29 of 2010 dated 04.07.2013.

2. The petitioner and the first respondent are husband and
wife. The second and third respondents are their children. The
marriage between the petitioner and the first respondent was
solemnized on 03.09.2009 as per the Hindu Rites and Customs Act.
In the wedlock, two children were born. Due to misunderstanding,
the respondents 1 to 3 were living in parental house of the
first respondent.

3. The petitioner filed a petition in F.C.O.P.No.1761 of
2001 before the learned II Additional Principal Judge, Chennai
for restitution of conjugal rights against the first respondent.
The first respondent agreed to live with the petitioner. In the

said proceedings, decree was passed by the Family Court, directing the first respondent to live with the revision petitioner herein. Thereafter, the petitioner, his wife and children were living separately at Raghava Street, Choolai, Chennai. Subsequently, the petitioner herein filed a petition for divorce before the Family Court, Chennai for dissolution of marriage in H.M.O.P.No.3626 of 2007, against the first respondent. The learned II Additional Principal Judge, Chennai passed an exparte decree against the first respondent herein on 04.12.2008. The first respondent has not taken any steps to set aside the order passed against her. Subsequently, the respondents had filed a case for maintenance before the Family Court at Puducherry in M.C.No.29 of 2010. After enquiry, the Family Court, Puducherry awarded a sum of Rs.3,000/- to the first respondent herein as monthly maintenance and Rs.1,500/- each to the children viz., respondents 2 and 3. Challenging the said order passed by the Family Court, Puducherry, the husband has filed the present revision before this Court.

4. The learned counsel for the petitioner would submit that the petitioner had no income at all and he has no job. The petitioner got divorce from the first respondent. Even though the said decree of divorce was an exparte decree, no steps was taken by the first respondent to set aside the exparte decree of divorce. Therefore, she is not entitled to get any maintenance from the petitioner and there is no proof to show that the petitioner is employed and he is earning a sum of Rs.10,000/-. Therefore, the order passed by the Family Court is liable to be set aside.

5. Heard the learned counsel for the petitioner and perused the materials available on record. Despite notice served to the respondent, there is no representation on their behalf.

6. The marriage between the petitioner and the first respondent, paternity of the children, relationship of the parties as well as the fact that they are living separately are not in dispute. According to the revision petitioner, the first respondent left the matrimonial home along with the children without any valid reason. Therefore, she is not entitled to get any maintenance from the petitioner. Subsequently, the petitioner filed a petition for divorce before the learned Family Court, Chennai in H.M.O.P.No.3626 of 2007 and got an exparte decree of divorce. That decree was not set aside so far, which shows that the first respondent left the matrimonial home and she is not willing to live with the petitioner. Therefore, she is not entitled to get any maintenance from him. Further, the petitioner has no means and he has no job at all. The learned Family Court has failed to consider all these aspects and awarded maintenance.

7. A perusal of the records and the order passed by the lower Court indicates that the petitioner is a graduate and he is working in Hicommands Tech India Limited as Trainer in IT Division since 2011 and getting a salary of Rs.10,000/-. Apart from the said monthly income, the petitioner has also got property in his name obtained by way of settlement deed.

8. Admittedly, the first respondent, wife is unemployed and she has to maintain minor children, as the second and third respondents are going to school. That being the case, considering the cost of living prevailing as on date and education expenses of the children, the maintenance award passed by the Family Court is justifiable and does not warrant any interference. Even though a decree of divorce has been granted and the parties are no more husband and wife, still the petitioner had duty to maintain his divorced wife and his two children. The petitioner shall maintain his divorced wife till she gets remarried.

9. Considering the facts and circumstances of the case, this Court does not find any perversity or infirmity in the order passed by the Family Court warranting interference by this Court, while exercising the revisionary jurisdiction.

10. In the result, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

rli

To

The Hon'ble Judge
The Family Court, Puducherry.

+1 CC to Mr.S.Francis Ashok, Advocate sr 70140.

CrI.R.C.No.1089 of 2013
and
CrI.M.P.No.1 of 2013

VD(CO)
SP(07/02/2020)