

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2020
PRONOUNCED ON : 22.12.2020

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl. R.C.No.63 of 2018
and MP.Nos.469 of 2018
and 11672 of 2019

R.Vivek Prabhu

.. Petitioner

Vs.

1.Sindhja

2.V.Olivia

Represented by her mother
as natural Guardian,
Mrs.Sindhuja

.. Respondents

Prayer: This Criminal Revision petition is filed to set aside the order dated 15.11.2017 passed in MC.No.10 of 2017 on the file of the Judicial Magistrate at Ambattur.

For Petitioner : Mr.S.Dhassaiya

For Respondents: Mr. S.Ravi

O R D E R

This Criminal Revision Petition is directed against the order passed by the learned Judicial Magistrate, Ambattur in MC.No.10 of 2017 on 15.11.2017.

2. The respondents in this Revision Petition filed MC.No.10 of 2017 as petitioners against the petitioner under Section 125 Cr.P.C claiming the maintenance of Rs.12,500/- per month to each respondents, Rs.5,000/- towards litigation charges and Rs.50,000/- per year towards the educational fees for the second respondent. The marriage between the petitioner and the first respondent was solemnised on 08.09.2014. Due to wedlock, the second respondent was born. The first respondent's parents presented her with 28 sovereigns of gold jewels and met the entire marriage expenses. The first respondent was working as Assistant Professor in DMI College of Engineering, Poonamallee

and she was going to college from the residence at Plot no.20, Sathiya Priya Nagar, 2nd cross street, Revathipuram, Urappakam. Since she had to travel a long distance to her working place, she encountered health problems. Therefore, she suggested to the petitioner to find a common place between her place of work and the petitioner's place of work. This suggestion was not accepted by the petitioner. Ultimately, the first respondent resigned a job. The first respondent handed over all her earnings to the petitioner while she was in service. However, the petitioner and his family members continue to demand the dowry and caused mental tension in different ways. The first respondent was not allowed to see her parents and she was not provided with any medical treatment when she fell ill. Even during the pregnancy, the first respondent was neglected and was not provided proper maintenance and medical care and was subjected to continuous mental torture. After the birth of the second respondent, the petitioner and his parents neglected her for giving birth to a female child. Even after nine months, the petitioner and his family members did not come forward to invite the respondents to the matrimonial home. When the matter was represented to Iyyancherry Parish Priest Paulraj, the petitioner and his family members imposed a condition to the first respondent that her parents should not come to visit her. The petitioner took the respondents to his brother's house at Flat No.9, Block No.1B, Begonia, Chennai. The first respondent was subjected to physical, abuse, verbal and economic abuse. On 17.04.2016, the petitioner broke the first respondent's cell phone and curtailed all sorts of communications to the outside world. On 18.12.2016, the respondent was chased out from the house. The petitioner is working as an Engineer in Satyam Venture Engineering Service Private Limited in Chennai, earning Rs.80,000/- per month. He deserted the respondents without providing anything to them. Therefore, this maintenance petition.

4. The petitioner's case is that he denies all the allegations made in the petition. The house at Iyyencheri Village, Urappakkam was purchased by the petitioner before his marriage through LIC Housing Finance Loan for a sum of Rs.21,00,000/-. The petitioner is paying a sum of Rs.21,000/- towards monthly instalment and it is to be paid for next 20 years. Whenever, the petitioner visited the first respondent to see the child, he was treated in a third rated manner and he was not allowed inside the house. He shifted the residence to the brother's house to give comfort to the respondents. The petitioner is drawing only Rs.65,000/- as monthly salary and he has to pay Rs.21,000/- towards Housing loan instalments and Rs.13,000/- towards Life Insurance Policy Premium. He has to take care of the aged parents and expend to Rs.15,000/- per month towards medical expenses. After all these expenses, he

has left only with a sum of Rs.15,000/- to meet his expenses. Though the petitioner had taken many efforts to bring his family, the respondent did not co-operate. The demand of Rs.25,000/- as maintenance is highly excessive and hence this petition is to be dismissed.

5. During the enquiry before the trial court, the first respondent was examined as PW-1 and Ex.P-1 - Xerox copy of wedding invitation, Ex.P2 - Wedding Photo and Ex.P3 - birth certificate of second respondent have been marked. On the side of the petitioner, he was examined as RW.1 and Ex.R1 - Salary Slip, Ex.R2 - LIC Housing Finance sanction letter along with repayment schedule, Ex.R3 - LIC Policy have been marked.

6. On considering the oral and documentary evidence in this case, the learned Judicial Magistrate found that the first respondent is entitled to receive a sum of Rs.10,000/- and the second respondent is entitled to receive a sum of Rs.5,000/- as maintenance for every month from the date of petition. Against the said order, this Criminal Revision Petition is filed.

7. The learned counsel appearing for the revision petitioner submitted that the Trial Court has failed to take into consideration the gross salary of the petitioner, statutory deduction, expenses towards himself, his aged parents and medical expenses before awarding a sum of Rs.15,000/- as maintenance to the respondents. In fact, the petitioner was always ready and willing to take back the respondents with him and live with them. It is the respondents, who are staying away from the petitioner. The award of Rs.10,000/- per month, to the first respondent and Rs.5,000/- to the second respondent as maintenance is highly excessive and therefore the revision petition has to be allowed and the order of the learned Judicial Magistrate has to be set aside.

8. The point for consideration is whether the order of the learned Judicial Magistrate suffers from many factual or legal error and whether the maintenance ordered by the Trial Court is excessive?

9. From the averments made in the petitioner's counter affidavit and from the evidence of parties, it is clear that there is no dispute with regard to the marriage between the petitioner and the first respondent and birth of second respondent out of this wed lock. It is also proved that the petitioner and the respondents are not living together now and at the time of filing the maintenance case. Though the petitioner claims that he is ready to take back the petitioner with him and live together, he has not chosen to file any documents to show his genuineness that he is willing to live

with the respondents. Admittedly, he has not filed any petition for restitution of conjugal rights. If he is really and genuinely interested in living joint with the respondents, he would have filed a petition before the Court against the first respondent for restitution of conjugal rights. The fact that he has not filed any such petition, shows that he is not interested in living jointly with the first respondent. Therefore, the claim of the petitioner is that he is ready and willing to live with the first respondent and the first respondent alone is refusing to come to live with him, in the considered view of this court, is false and farce.

10. As the husband of the first respondent and father of the second respondent, the petitioner is liable to maintain his wife and daughter. Admittedly, it is seen from pay slip for the month of October 2017 and November 2017 that he was drawing a gross salary of Rs.77,667/- per month. After deduction of Rs.3,150/- towards Provident Fund, Rs.183/- towards Professional Tax, Rs.700/- towards Income Tax, Rs.7,875/- towards Staff Loan and Rs.2,800/- towards other deduction, he gets a net Salary of Rs.62,959/- per month at his hand. It is also seen that he has been paying a sum of Rs.21,301/- towards Housing Loan payment. Apart from this, he has been paying Rs.9092/- towards LIC premium. Out of Rs.62,959/-, he pays Rs.21,301/- towards Housing Loan and Rs.9092/- towards LIC premium and a sum of Rs.32,966/- remains at his hand towards his expenses. Petitioner submits that he has to maintain the aged parents. The son is liable to maintain his parents also. However, the petitioner's liability to maintain wife and child cannot be neglected on the ground that the petitioner has to maintain his aged parents also. Admittedly, the petitioner had his brother who is well placed. Therefore, his brother can also share the expenses towards the maintenance of parents.

11. Petitioner admitted that his brother is a Software Engineer in HCL Multi National Company. He admitted that there was a problem when the petitioner and the respondents were staying in the house of his brother. He admitted filing a divorce petition in Family Court, Chengalpattu. He admitted that if he did not borrow loan, a sum of Rs.7,875/- would not have been deducted from the salary. Very frankly, he admitted that he filed a divorce petition for the reason that he is not prepared to live with the first respondent. It is his admission that the first respondent is jobless now. To cap it all, he admitted that he is liable to pay maintenance to the respondents every month.

12. It is clear from the own admission made by the petitioner that he did not want to live with the first respondent and that is the reason why he filed a divorce

petition before the Family Court, Chengalpet. The first respondent is jobless now and he is legally liable to maintain the respondents. His brother is a Software Engineer in HCL Multi National Company. As seen from the evidence, if he did not borrow the staff loan, a sum of Rs.7,875/- would not have been deducted from his salary. Once the loan period is over, the petitioner will get a sum of Rs.7,875/- in addition to it what he get now. This salary slip is the period from October 2017-November 2017. Now we are in the year 2020. Certainly, there would have been raise in the salary of the petitioner. Considering the present economic status of the petitioner and the first respondent, the current economic situation, the monthly earning of the petitioner un-employment of the first respondent, this Court is of the considered view that a sum of Rs.10,000/- to the first respondent and a sum of Rs.5,000/- to the second respondent as monthly maintenance cannot be considered as excessive. Assuming that the respondents joined petitioner for joint living as alleged by the petitioner, the petitioner has to spend atleast Rs.10,000/- to the first respondent and Rs.5,000/- to the second respondent towards monthly maintenance. This Court is of the considered view that the monthly maintenance ordered by the learned Judicial Magistrate, Ambattur, in MC.No.10 of 2017 at Rs.10,000/- to the first respondent and Rs.5,000/- to the second respondent cannot be considered excessive and it is just and fair amount ordered under the present economic condition.

13. In this view of the matter, this Court finds that there is no illegality or impropriety in the order of the learned Judicial Magistrate, Ambattur and therefore the order passed in MC.10 of 2017 on 15.11.2017 ordering the sum of Rs.10,000/- to the first respondent, Rs.5,000/- to the second respondent as monthly maintenance from the date of filing the petition is confirmed and this Criminal Revision Petition is dismissed.

14. In the result, this Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

s/d-

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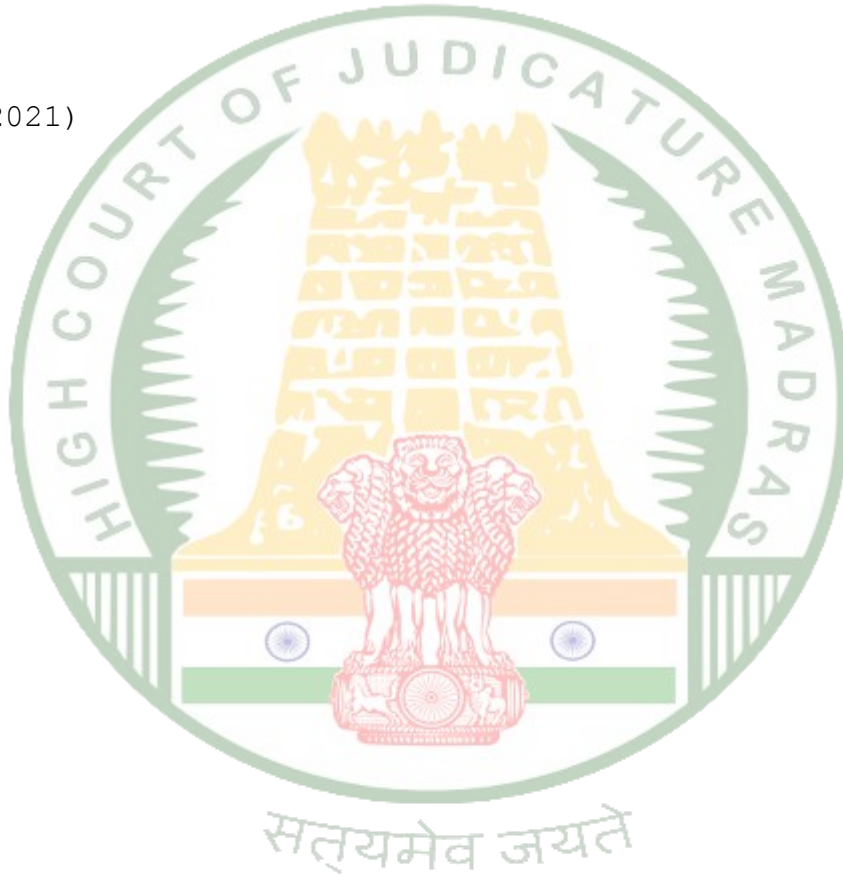
To

1. The Judicial Magistrate,
Ambattur.

+2 Ccs to Mr.S.Dhassaiya, Advocate sr 42704.

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