

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.09.2020
PRONOUNCED ON : 26.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.12004 of 2017

1.R.Santhakumari
2.Minor R.Prasanth
3.Minor R.Panneer Selvam ... Petitioners / Respondents /
Petitioners

Vs.

P.N.Rajendran ... Respondent / Petitioner /
Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Crl.R.P.No.07 of 2013, dated 25.08.2015, on the file of the District Judge, District Court No.II, Kanchipuram.

For Petitioners : Mr.I.Abrar Md.Abdullah

For Respondent : Mr.V.V.Sairam

ORDER

This Criminal Original Petition has been filed praying to set aside the order passed in Crl.R.P.No.07 of 2013, dated 25.08.2015, on the file of the District Judge, District Court No.II, Kanchipuram.

2. The learned counsel appearing for the petitioner submitted that the 1st petitioner is the legally wedded wife of the respondent and the petitioners 2 and 3 are their son. The marriage between the 1st petitioner and the respondent took place on 05.06.1981. The respondent was working as a Salesman in Tiruvalluvar Silk Handloom Weavers Co-operative Production and Sales Society Limited, at Kanchipuram. The respondent developed illicit intimacy with one Anjala and from the year 1998 onwards, the respondent is living with the said Anjala, deserting the petitioners and they are struggling to lead a life without any means to maintain herself and her children. Hence, the petitioners filed a Petition for Maintenance in M.C.No.10 of 2004, before the learned Judicial Magistrate No.1, Kancheepuram, which was allowed, by directing the respondent/husband to pay Rs.1500/- per month to each petitioner, on or before the 5th day of the month and to pay

Rs.5000/- per year, towards clothing and medical expenses, for each petitioner.

3. The learned counsel for the petitioners further submitted that the respondent, aggrieved over the order passed in M.C.No.10 of 2004, by the learned Judicial Magistrate No.1, Kancheepuram, preferred a Revision in Crl.R.P.No.07 of 2013, before the learned District Judge, District Court No.II, Kanchipuram, which was allowed by setting aside the order passed in M.C.No.10 of 2004, dated 01.08.2013. Against which, the petitioners are before this Court.

4. It was further contended by the learned counsel for the petitioners that the lower appellate Court erroneously held that since the respondent / husband has retired from services, he should not be compelled to pay any maintenance and the onus was on the petitioners to prove the factum of pension that was being received by the respondent, are unknown to law. Further, the respondent purchased immovable property in the name of his girl friend Anjala and therefore, the respondent / husband is having means to pay maintenance to the petitioners. The marriage

between the 1st petitioner and the respondent is not disputed, the petitioners 2 and 3 are aged below 18 years, they remain unmarried and the relationship of the respondent with the 1st petitioner is not dissolved by the Court of competent jurisdiction, the relationship between the petitioners and the respondent are intact, as a dutiful husband and father of two children, the respondent is bound to maintain the petitioners, and hence, the learned counsel for the petitioners prayed for setting aside the order passed in Crl.R.P.No.07 of 2013, dated 25.08.2015, by the learned District Judge, District Court No.II, Kanchipuram.

5. Per contra, the learned counsel for the respondent / husband would submit that the lower appellate Court was right in setting aside the order passed by the learned Judicial Magistrate No.1, Kancheepuram, in M.C.No.10 of 2004. The respondent / husband retired from service on 30.06.2012 and the respondent cannot maintain the petitioners, as he is not having any source to pay maintenance and he is a man of no means, after his retirement. He would further submit that the order of the lower appellate Court made in Crl.R.P.No.07 of 2013, is well considered and sought for confirmation. Hence, the learned counsel for the

respondent prayed for dismissal of the petition.

6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. The 1st petitioner is the wife and the petitioners 2 and 3 are sons of the respondent / husband and the relationship is not denied. The petitioners and the respondent living separately. It is seen that the respondent developed illicit intimacy with one Anjala and from the year 1998 onwards, the respondent is living with the said Anjala, deserting the petitioners. Hence, the petitioners filed a Petition for Maintenance in M.C.No.10 of 2004, before the learned Judicial Magistrate No.1, Kancheepuram, which was allowed, by directing the respondent/husband to pay Rs.1500/- per month to each petitioner, on or before the 5th day of the month and further directed to pay a sum of Rs.5000/- per year, before 30th January. In the Revision filed by the respondent, the lower appellate Court, though confirms the relationship of the petitioners and the respondent and that the respondent is living with one Anjala, allowed the Revision, by setting aside the order passed by the learned Judicial Magistrate No.I, Kancheepuram in

M.C.No.10 of 2004. The respondent purchased the properties in the name of Anjala and also purchased two immovable property in the name of the 1st petitioner is also confirmed. In one property, the petitioners are residing and in another property, though it has been purchased the documents yet to be registered and wantonly kept pending for deficiency of stamp duty and the purchase is only name sake as on the date.

8. The respondent retired from his service is also not in dispute, it will not absolve the respondent from maintaining the petitioner. The desertion by the respondent is voluntary and thereafter, he is living with another lady namely Anjala. Further, the lower appellate Court giving finding that it is for the petitioners to prove that the respondent is having, liquid case cash in his hand or his Bank and after his retirement on 30.06.2012, the respondent having source of income is not proper. It is also found that the respondent herein managed to protract the Maintenance Case from the year 2004 and till 2015, he successfully protracted the same and during that period, the respondent has failed to make any maintenance to the petitioners. It is seen that the 2nd and 3rd petitioners are now attained majority. Whether they are

employed and making any earnings has to be proved by the respondent. The undisputed fact is that the first petitioner is deserted wife of the respondent and she is not employed anywhere making any income and it is duty of the respondent to maintain the petitioner. Further, the lower appellate Court had given a finding that the order of the learned Judicial Magistrate, directing to pay the maintenance to the petitioners, after his retirement from 30.06.2012 is not proper as per law. The lower appellate Court on its own had given a different finding, which is neither the case of the petitioner nor the issues before the lower appellate Court. If at all the respondent aggrieved, he is to file a petition under Section 127 of Cr.P.C., to redress his grievance. This Court, does not find any patent illegality, impropriety or incorrectness in the order passed by the learned Judicial Magistrate No.1, Kancheepuram in M.C.No.10 of 2004, directing the respondent/husband to pay Rs.1500/- per month to each petitioner, on or before the 5th day of the month and to pay Rs.5000/- per year, towards clothing and medical expenses, for each petitioner.

9. It is seen that the maintenance case is of the year 2004 and the respondent/husband herein had not paid single paisa to the petitioner till date. If the respondent purposely failed to pay and filed Section 126 Cr.P.C., petition, the concerned Court shall dispose of the said petition, without delay, not later than 60 days, after giving opportunity to both the parties. If the respondent evades service wantonly, coercive action can be taken against him.

10. In the result, this Criminal Original Petition is allowed and the order passed by the learned District Judge, District Court No.II, Kanchipuram in Crl.R.P.No.07 of 2013, dated 25.08.2015, is set aside. The respondent / husband is directed to pay the monthly maintenance to the petitioners, as ordered by the learned Judicial Magistrate No.I, Kanchipuram in M.C.No.10 of 2004. The respondent- husband is further directed to pay all arrears of maintenance to the petitioners, within a period of three months from the date of receipt of a copy of this order.

26.03.2021

Index : Yes/No
Internet : Yes/No
MPK

To

- 1.The District Judge,
District Court No.II,
Kanchipuram.
2. The Judicial Magistrate No.1,
Kancheepuram,
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

MPK



**PRE-DELIVERY ORDER IN
Crl.O.P.No.12004 of 2017**

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