



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 28.08.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.315 of 2020

Nadukattan

.. Petitioner

Vs.

1.G.Shobana

2.Minor Harsath

3.Minor Rithika

.. Respondents

(The respondents 2 and 3 are minors represented by their mother and natural Guardian 1st respondent herein)

Prayer : This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., to set aside the order passed by the learned Judicial Magistrate, Rajapalayam in M.C.No.2 of 2015 dated 12.04.2019.

For Petitioner

: Mr.M.Jothibas

For Respondents

: Mr.A.Balaji

ORDER

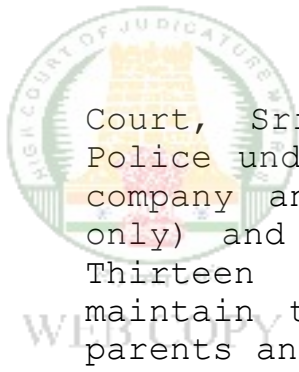
The revision petitioner is the husband, the first respondent is the wife and the respondents 2 and 3 are the minor children. The respondents has filed a case in M.C.No.2 of 2015 before the learned Judicial Magistrate, Rajapalayam, seeking maintenance from the petitioner herein. The learned Judicial Magistrate, Rajapalayam allowed the petition on 12.04.2019, directing the petitioner to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) as maintenance towards the respondents. Against that order, the petitioner preferred this civil revision petition.

2.Brief substance of the petition in M.C.No.2 of 2015, is as follows:

On 05.06.2014, at about 10.30 p.m., the husband/respondent in a drunken mood chased away the wife and the children from the house. The husband/respondent is a Civil Engineer earning Rs.1,00,000/- (Rupees One Lakh only) per month and prayed for a sum of Rs.30,000/- (Rupees Thirty Thousand only) towards maintenance.

3.Brief substance of the counter in M.C.No.2 of 2015, is as follows:

The marriage between the respondent and the first petitioner dated 27.10.2006 is admitted. The paternity of the minor children are also admitted. The wife deserted the revision petitioner and filed a false complaint against the revision petitioner. The divorce petition is still pending before the Sub

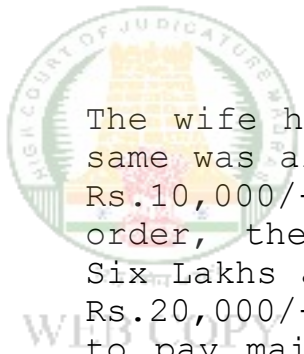


Court, Srivilliputhur. The wife lodged a complaint before the Police under DV Act. The first petitioner is working in a private company and she is earning Rs.20,000/- (Rupees Twenty Thousand only) and she is taking tuition and earning Rs.13,000/- (Rupees Thirteen Thousand only). She is having sufficient means to maintain the children. The respondent has to maintain his aged parents and prayed the petition to be dismissed.

4.After trial, the learned Judicial Magistrate passed an order directing the revision petitioner to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) towards the maintenance of the respondents. Against which, the petitioner has preferred this revision case.

5.On the side of the revision petitioner, it is stated that the wife is not entitled to claim maintenance, since she has deserted the revision petitioner. The first respondent is running a tailoring shop and taking tuition and earning sufficient money to maintain herself and for the children. When the revision petitioner filed a divorce petition before the Sub Court, Srivilliputhur, only as a counter blast, the first respondent wife has filed a petition for maintenance. She has filed a petition in I.A.No.16 of 2016 claiming interim maintenance. On 28.06.2016, the learned Sub Judge, Srivilliputhur has passed an exparte order against the petitioner. The learned Judicial Magistrate failed to take note that as per the order of the Sub Court, Srivilliputhur, the revision petitioner has paid a sum of Rs.52,500/- (Rupees Fifty Two Thousand and five Hundred only) on 04.03.2019. On 21.11.2019, as per the order of the Sub Court, Srivilliputhur, the revision petitioner has paid a sum of Rs.1,67,500/- (Rupees One Lakh Sixty Seven Thousand and Five Hundred only) to the first respondent. Again on 13.11.2019, the revision petitioner has paid a sum of Rs.1,00,000/- (Rupees One Lakh only) to the first respondent. It is the duty of the first respondent to choose any one of the forum to collect maintenance and prayed the petition to be allowed.

6.On the side of the first respondent, it is stated that the revision petitioner deserted the first respondent and he filed the petition for divorce before the Sub Court, Srivilliputhur in H.M.O.P..No.134 of 2014. The wife has filed a petition for maintenance in I.A.No.16 of 2016. The petition was allowed on 19.02.2019 directing the petitioner to pay a sum of Rs.8,000/- (Rupees Eight Thousand only) per month from the date of filing of H.M.O.P. The revision petitioner is bound to pay Rs.5,76,000/- (Rupees Five Lakhs Seventy Six Thousand only). Out of which, the revision petitioner has paid only a sum of Rs.3,20,000/- (Rupees Three Lakhs Twenty Thousand only) till today and he is yet to pay a sum of Rs.2,56,000/- (Rupees Two Lakhs Fifty Six Thousand only).



The wife has filed a maintenance case in M.C.No.2 of 2015 and the same was allowed directing the revision petitioner to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) per month. As per the order, the revision petitioner has to pay Rs.6,70,000/- (Rupees Six Lakhs and Seventy Thousand only). Out of the same, he has paid Rs.20,000/- (Rupees Twenty Thousand only). The petitioner is bound to pay maintenance as per the order of any of the Court. He can pay maintenance in M.C.No.2 of 2015 and can file the receipt before the Sub Court, Srivilliputhur.

7.It is seen that the marriage between the revision petitioner and the first respondent is not denied. The revision petitioner did not question the paternity of the minor children. There are two Court orders directing the revision petitioner to pay maintenance. M.C.No.2 of 2015 is the oldest order and the amount of the maintenance is also at a higher end. The revision petitioner has admitted that he is ready to oblige the order of the learned Judicial Magistrate.

8.The first respondent also has admitted that the petitioner can oblige any one of the Court orders. The learned counsel for the respondents agreed that the wife will not insist for payment as per the order in I.A.No.16 of 2016. Hence, it is decided that maintenance has to be paid as per the orders of the learned Judicial Magistrate in M.C.No.2 of 2015.

9.In view of the above, the revision petitioner is directed to pay the arrears of maintenance amount within a period of three months from the date of receipt of copy of this order and further directed to pay the monthly maintenance amount on or before fifth of every month. The amount already paid by the revision petitioner in I.A.No.16 of 2016 in H.M.O.P.No.134 of 2014 may be taken into consideration as payment made in M.C.No.2 of 2015. The petitioner is directed to file the receipt of payment of maintenance in M.C.No.2 of 2015 before the Sub Court, Srivilliputhur. The petitioner is directed to make further payments before the learned Judicial Magistrate.

10.With the above direction, this Criminal Revision Case is disposed of.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)



Mrn

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Judge, Sub Court, Srivilliputhur.

2.The Judicial Magistrate, Rajapalayam.

+1 CC to Mr.M. JOTHI BASU, Advocate (SR-15348[F] dated 31/08/2020)

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KM (10.09.2020) 4P 4C