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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.5104 of 2019

and

Crl.M.P.No.2969 of 2019

1. Chitra

2. Minor Vikas

Rep by guardian mother Smt.Chitra

.. Petitioners/ Respondent/Claimants

Vs.

M.Senthil

.. Respondent/Petitioners/ Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the order dated 26.09.2018 made in C.R.P.No.37 of 2017 on the file of the III Additional District and Sessions Judge, Coimbatore reversing the order dated 14.09.2017 made in M.C.No.17 of 2015 on the file of the learned Judicial Magistrate No.1, Pollachi and set aside the same.

For Petitioners : Mr.D.R.Arunkumar

For Respondent : Mr.Mukunth for
Saravabhuman Associates

O R D E R

This Criminal Original Petition has been filed to call for the records relating to the order dated 26.09.2018 made in C.R.P.No.37 of 2017 on the file of the III Additional District and Sessions Judge, Coimbatore reversing the order dated 14.09.2017 made in M.C.No.17 of 2015, on the file of the learned Judicial Magistrate No.1, Pollachi and set aside the same.

2. The petitioners herein are the wife and the minor son of the respondent. The case of the petitioners is that the marriage between the 1st petitioner / wife and the respondent was held on 16.03.2008 as arranged one and as demanded, 15 sovereigns of gold were given as Tali for the bride and 8



sovereigns of gold chain was given to the bride groom and the marriage expenses were incurred by the bride's family. Out of their marriage, the 2nd petitioner son was born. Thereafter, the respondent family started demanding more jewels and harassing the petitioner. The 2nd petitioner was born on 03.03.2009 and the entire expenses towards delivery was spent by the 1st petitioner's parents. After 3 months from the date of birth of child, the respondent's father had died and since the baby was underweight, the petitioner has taken the boy to her parents house and due to the health condition of the minor son, the petitioner wife had stayed in her parental home for further treatment.

3. In the meanwhile, taking advantage of the prevailed situation, in order to leave the company of his wife, the respondent has filed a petition for divorce and obtained an exparte decree on 30.12.2012 and the 1st petitioner had taken steps to set aside the exparte order and the same is also pending. Since the husband has not maintained the child and had deserted the wife and the child, the 1st petitioner claimed maintenance for medical expenses and other expenses in M.C.No.17 of 2015. The learned Judicial Magistrate has awarded Rs.10,000/- each towards the petitioners herein, by its order dated 14.09.2017. Aggrieved by the said order, the respondent herein has preferred revision before the Lower Appellate Court in C.R.P.No.37/2017, whereby the learned Judge, has rejected the awarded maintenance amount for the 1st petitioner wife and reduced the award amount to the minor son from Rs.10,000/- to Rs.6,000/- per month. Challenging the said reduction order, the petitioners are before this Court.

4. The learned counsel appearing for the petitioner submitted that the Trial Court dismissed the claim of the 1st petitioner on the ground that the marriage was performed in the year 2008, however, the claim petition was filed in the year 2015 and the delay was not properly explained. The claim of the 1st petitioner wife was dismissed without any justifiable reasons and reduced the maintenance of Rs.10,000/- to Rs.6,000/- per month in respect of the 2nd petitioner. In both the cases, the reasons assigned by the Lower Appellate Court is non-est in the eye of law and without any basis. Accordingly prays for allowing of the present petition.

5. The learned counsel appearing for the respondent submitted that the Lower Appellate Court has rightly rejected the claim made by the petitioners. The marriage was performed in the year 2008 and the respondent has got an exparte order during the year 2012 and the maintenance petition, which was belatedly filed after a period of three years, was ordered in favour of the petitioner in the year 2015. Therefore, it is to be pointed



out that the petitioner Wife was able to manage herself and her child for a period of three years and odd, without any assistance from the husband. All of a sudden, after a lapse of three years of divorce, claiming maintenance is only to harass the respondent and to grab money from him. Subsequent to the divorce on 30.12.2012, the respondent has married another woman and they are living together. Though the petitioner has filed a Set aside petition before the Trial Court, till date no order was passed on the same and further the petitioner Family is having 20 acres of land and through agricultural operation, earning nearly a sum of Rs.1,50,000/- per month and there is no need to pay maintenance from the hands of the respondent to the petitioners and therefore, the Lower Appellate Court is right in rejecting the claim of the 1st petitioner and reducing the amount to Rs.6,000/- towards the 2nd petitioner and hence prays for dismissal of this petition.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. The facts in the present case is not in dispute that the relationship of the petitioner and the respondent got dissolved. Admittedly the marriage was performed in the year 2008 and the 2nd petitioner was born in the year 2009. It appears that due to matrimonial dispute in between the couples, the respondent has filed a divorce petition in H.M.O.P.No.360/2010 and the Trial Court had passed an exparte decree without hearing the 1st petitioner. It is also an admitted fact that as against the exparte decree, the 1st petitioner has filed a set aside petition before the Trial Court, which is still pending without any order. In the meanwhile, the petitioners have filed maintenance petition in the year 2015, claiming a sum of Rs.25,000/- each and the Trial Court, after adjudication, awarded a sum of Rs.10,000/- each. Challenging the said award amount of maintenance, the respondent herein has preferred the Revision Petition in C.R.P.No.37/2017, wherein the Lower Appellate Court rejected the claim of the 1st petitioner on the ground that the 1st petitioner had filed the claim petition after a lapse of three years by relying on the decision of the Hon'ble Supreme Court in D.Velusamy Vs. D.Patchaiammal in C.A.Nos.2028 - 2029 of 2010 and held that the 1st petitioner has not filed 125 Cr.P.C. Petition within a reasonable time.

8. This Court perused the above cited decision. A perusal of the decision makes it clear that in the said case, the marriage was performed in the year 1986 and the wife left the matrimonial home in the year 1989 and after 12 years, she filed a maintenance petition under Section 125 Cr.P.C. and in that background, the Hon'ble Apex Court held that the wife is not entitled for maintenance and the wife has not properly



explained the delay and on the sole ground, the maintenance was rejected by the Hon'ble Apex Court in the above cited case.

9. In the case on hand, admittedly the marriage was performed in the year 2008 and the 2nd petitioner was born in 2009 and thereafter, there was no compatibility in between the couples, for which, the respondent has filed divorce petition in the year 2010 and the exparte order was passed in the year 2012. After the exparte order, the petitioner wife immediately filed set aside petition before the Trial Court and so also the maintenance petition in the year 2015. Initially the Trial Court has awarded a sum of Rs.10,000/- each. Against the order of maintenance, the respondent's petition for revising the award amount, got ordered in favour of him, whereby the Lower Appellate Court has rejected the claim of the 1st petitioner in toto, but reduced the maintenance amount as ordered by the Trial Court to Rs.6,000/- from Rs.10,000/- insofar as the 2nd petitioner is concerned. However this Court is of the view that reasons for rejecting the claim of the 1st petitioner, more especially the delay, is not justifiable as it is evident from the record that there were series of litigations after the order of divorce. Hence the Lower Appellate Court was not justified in applying the law mechanically and dismissing the maintenance awarded to the 1st petitioner. Therefore, this Court has no hesitation to set aside the order passed by the lower Appellate Court rejecting the claim of maintenance of the 1st petitioner.

10. Insofar as reduction of maintenance awarded to the 2nd petitioner is concerned, the same is also not justifiable one, as the respondent, as a father, is duty bound to take care of his child. The responsibility is on respondent to provide all the necessities to his child and it is admitted that the 2nd petitioner is studying 7th standard in a private school, namely, SBB CBSC School and further the 1st respondent has obligation to meet out medical expenses as well as educational expenses of the minor child and considering the medical and educational expenses in the present day scenario, bringing up the child by giving good education would definitely require a considerable amount and, therefore, the maintenance awarded to the child requires increase.

11. For the reasons aforesaid, this Court is inclined to allow the petition on the following terms:

This Criminal Original Petition is allowed and the order dated 26.09.2018 made in C.R.P.No.37 of 2017, on the file of the III Additional District and Sessions Judge, Coimbatore, is set aside and this Court is inclined to award an amount of Rs.10,000/- as monthly maintenance to the 1st petitioner and Rs.15,000/- as monthly maintenance to the 2nd petitioner, in all



totaling to Rs.25,000/- payable by the respondent from the date of this order. The arrears, if any, payable by the respondent from the date of filing of the maintenance petition till date, is directed to be deposited to the credit of the 1st petitioner's bank account and the 1st petitioner is entitled to withdraw the amount ordered towards the share of the 2nd petitioner and use the same for the purpose of educational and medical expenses of the 2nd petitioner. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate No.1, Pollachi.
3. The Public Prosecutor,
High Court, Madras.

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+1cc to Saravabhuman Associates, Advocate, S.R.No.39886
+1cc to D.R.Arunkumar, Advocate, S.R.No.39706 CT(25/02/2022)

Cr1.O.P.No.5104 of 2019
and Cr1.M.P.No.2969 of 2019

NR(CO)
CT(29/09/2021)