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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2021

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.O.P.NO.15749 OF 2019  
AND CRL.M.P.NO.7858 OF 2019

Durairaj

... Petitioner/  
Respondent

Versus

1.Savithri  
2.Nithish (Minor)  
Rep. by his mother

... Respondents/  
Petitioners

PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 12.03.2019 passed in Crl.R.P.No.20 of 2017 by the Learned Principal District Judge, Villupuram confirming the order passed in Crl.M.P.No.7643 of 2016 in M.C.No.6 of 2015 by the learned Judicial Magistrate No.II, Ulundurpet.

For Petitioner: M/s.D.Kumaralingam  
Mr.S.Kannan

O R D E R

The petitioner has filed this petition to set aside the order dated 12.03.2019, passed in Crl.R.P.No.20 of 2017, by the Learned Principal District Judge, Villupuram, confirming the order passed in Crl.M.P.No.7643 of 2016 in M.C.No.6 of 2015 by the learned Judicial Magistrate No.II, Ulundurpet.

2. The case of the petitioner is that the respondents are wife and son of the petitioner and the marriage between the petitioner and the 1<sup>st</sup> respondent was solemnized on 20.01.2006, as per Hindu Customs and Rites, in the presence of their parents and family members. Out of wedlock, they begotten a male child, viz., Nithish / 2<sup>nd</sup> respondent on 01.11.2006. Thereafter, there was no compatibility between them and thereby, the 1<sup>st</sup> respondent



has left the matrimonial home and staying with her mother. Thereafter, the 1<sup>st</sup> respondent has filed M.C.No.6/2015, on the file of the learned Judicial Magistrate-II, Ulundurpet, claiming Rs.12,000/- per month as monthly maintenance to the respondents. The Trial Court has passed an exparte order dated 20.11.2015 and awarded a sum of Rs.2,500/- in respect of 1<sup>st</sup> respondent and Rs.3,000/- in respect of 2<sup>nd</sup> respondent. Aggrieved by the said award amount, the petitioner is before this Court by filing this petition.

3. The learned counsel appearing for the petitioner submitted that the petitioner immediately on coming to know about the exparte order, had filed Crl.M.P.No.7643 of 2016 to set aside the exparte order passed against him in M.C.No.6 of 2015. The respondent objected the same on the ground of limitation. After hearing the parties, the Trial Court has dismissed the petition on 13.04.2017, on the ground that the petition has been filed after the expiry of three months from the date of order. Aggrieved by the same, the petitioner has filed Crl.R.P.No.20 of 2017, before the learned Principal District Judge, Villupuram, to set aside the order passed in Crl.M.P.No.7643 of 2016 and the said Court, after hearing the parties had confirmed the order passed in Crl.M.P.No.7643 of 2016. Challenging the same, the present petition is filed by the petitioner.

4. It is further submitted that the notices sent to the petitioner in M.C.No.6 of 2015 were returned and unserved and the petitioner immediately on coming to know about the exparte order, had filed appropriate petition before the concerned Court. Further the petitioner is only a milk vendor and his income from milk vending would not sufficient to settle the amount awarded in the Maintenance Petition. Therefore, the Trial Court, without taking note of the material facts awarded a sum of Rs.2,500/- in respect of 1<sup>st</sup> respondent and Rs.3,000/- in respect of 2<sup>nd</sup> respondent. Though the said order was challenged in Crl.M.P.No.7643/2016, the said petition was dismissed on the ground of limitation. The petitioner on immediate knowledge of the exparte order, has filed the said petition to set aside the exparte order and thereby, the delay in filing the petition is neither wilful nor wanton and hence prays for allowing of this petition.

5. Though notice was served on the respondents, there is no representation on behalf of them. This Court, considering the pendency of this petition, is inclined to dispose of the matter based on the available records.

6. It appears that the relationship of the petitioner and the 1<sup>st</sup> respondent is not in dispute. The only grievance of



the petitioner is to the quantum of award amount passed by the Trial Court. Though it is claimed by the 1<sup>st</sup> respondent that the petitioner is having agricultural land to an extent of 4 acres and earning Rs.40,000/- per annum and furthermore having two milch cows and earning Rs.2,500/- per month, no documents have been filed to substantiate the said claim. Further a perusal of the materials reveals that though the 1<sup>st</sup> respondent claims a sum Rs.12,000/- per month as monthly maintenance to the respondents, the Trial Court, after elaborately discussed all the points and based on the evidence adduced, had reached a reasonable conclusion by awarding monthly maintenance of Rs.2,500/- in respect of 1<sup>st</sup> respondent and Rs.3,000/- in respect of 2<sup>nd</sup> respondent. In such situation, when the Trial Court elaborately discussed the matter and arrived at a conclusion, this Court is not inclined to interfere with the reasons assigned by the Trial Court, as there is no error apparent on the face of the record and hence, in the present cost of living, the order granting maintenance amount to the respondents, is just and reasonable.

7. Accordingly, this Criminal Original Petition is dismissed. Consequently connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,  
Villupuram.
2. The Judicial Magistrate No.II,  
Ulundurpet.
3. The Chief Judicial Magistrate,  
Villupuram.

CRL.O.P.No.15749 of 2019  
and Crl.M.P.No.7858 of 2019

GJ(CO)  
PM/30/11/2021