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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Cr1.O.P.No.14155 of 2019
and
Cr1.M.P.No.6859 of 2019

Govindasamy

.. Petitioner/Respondent

Vs.

M.Kanchana

.. Respondent/Petitioner

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the order dated 11.01.2019 made in C.R.P.No.16 of 2018 on the file of the learned Additional District Judge (Fast Track) Vellore confirming the order dated 06.04.2018 made in M.C.No.8 of 2012 on the file of the learned Judicial Magistrate, Katpadi and set aside the same.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.C.Prabakaran

O R D E R

The petitioner has filed this petition to call for the records relating to the order dated 11.01.2019, made in C.R.P.No.16 of 2018, on the file of the learned Additional District Judge (Fast Track) Vellore, confirming the order dated 06.04.2018 made in M.C.No.8 of 2012 on the file of the learned Judicial Magistrate, Katpadi and set aside the same.

2. The case of the petitioner is that marriage between the petitioner and the respondent was solemnized on 16.09.1999 in the presence of friends and relatives. Due to wedlock, no child was born to them. During the course of matrimonial life, there was no compatibility between them and thereafter, the respondent / wife had left the company of the husband and deprived him of marital rights without proper and sufficient cause and hence the petitioner has filed H.M.O.P.No.84 of 2009, on the file of the learned Sub Court, Gudiyattam, on 18.12.2009



under Section 13(1)(ib) of the Hindu Marriage Act, 1955 to dissolve their marriage and obtained an ex parte order on 31.08.2010. However, the respondent without any legal right, had filed a maintenance petition in M.C.No.8 of 2012, before the Lower Court, claiming a sum of Rs.6,000/- per month. The Lower Court, after recording the reasons had partly allowed the petition by directing the petitioner to pay a monthly maintenance of Rs.3,000/- per month to the respondent. Aggrieved by the said order, the petitioner has preferred C.R.P.No.16/2018, on the file of the learned Additional District Judge/Fast Track Court, Vellore, to set aside the order dated 03.06.2018 made in M.C.No.8/2012 and the same was dismissed on 11.01.2019. Challenging the said order passed by the Lower Court and to set aside the same, the present petition is filed.

3. The learned counsel appearing for the petitioner submitted that admittedly the relationship of the petitioner and the 1st respondent is not in dispute. Further, the petitioner made allegation against the 1st respondent that she is living illegal life and having illegal intimacy with one person, namely, Shiva. However, the Trial Court, without taking note of the material facts and as to the earnings of the petitioner, awarded a sum of Rs.3,000/- to the respondent.

4. The learned counsel appearing for the petitioner further submitted that H.M.O.P.No.84 of 2009, was ordered in favour of the petitioner and thereby as per Section 125(4) Cr.P.C, the 1st respondent is not entitled for any maintenance. Accordingly prays for allowing of this petition.

5. The learned counsel appearing for the respondent submitted that though several attempts were made by the respondent and the elder member of the family, the petitioner had not chosen to cohabit with her. The respondent has also filed H.M.O.P.No.55/2012, seeking restitution of conjugal rights and the same was pending. The respondent without any source of income, struggling to maintain herself. Since the petitioner is having 4 ½ acres of land and a house and also earning nearly Rs.15,000/- per month, he is capable to pay the award amount as ordered by the Trial Court and prays for dismissal of this petition.

6. This Court has carefully considered the rival submissions and also perused the materials placed on record.



7. The grievance expressed by the petitioner is that admittedly the petitioner had obtained exparte decree in respect of the dissolution of marriage against the respondent and thereby the petitioner claims that the respondent is not entitled for maintenance in view of Sub Section 4 of Section 125 Cr.P.C.

8. For better appreciation, Section 125(4) Cr.P.C. is extracted hereunder:

' ' No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.' '

9. A perusal of the above provisions reveals that the wife shall not be entitled to receive an allowance if she refuses to live with her husband. In the present case, it is stated by the petitioner that the respondent refuses to live with her husband, without any sufficient reasons, inspite of wife being requested to live with her husband, however, a perusal of the materials available on record reveals that the petitioner has deserted the respondent and willfully thrown out from the petitioner's house and thereby she left the company of the petitioner herein and further, all the points were elaborately discussed by the Trial Court and based on the evidence adduced, had reached a reasonable conclusion by awarding monthly maintenance of Rs.3000/- to the respondent. In such situation, when the Trial Court elaborately discussed the matter and arrived at a conclusion, this Court is not entitled to interfere with the reasons assigned by the Trial Court, as there is no error apparent on the face of the record.

10. In view of the aforesaid finding recorded, this Court is of the considered view that the present petition cannot be sustained on the ground made out by the petitioner. The maintenance order passed by the Trial Court is just and reasonable and this Court is not inclined to interfere with the maintenance order passed by the Court below. Considering the present situation, this Court is of the further view that once the revision is entertained, further revision is not permissible under Section 482 Cr.P.C. Since there is no serious miscarriage of process of law and further the petitioner did not establish the case against the respondent, this Court is not inclined to interfere with the order passed by the Lower Court in C.R.P.No.16/2018.



11. Accordingly, this Criminal Original Petition is dismissed, confirming the order passed by the the learned Additional District Judge (Fast Track) Vellore, in C.R.P.No.16/2018. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

1. The Additional District Judge (Fast Track)
Vellore.

2. The Judicial Magistrate, Katpadi.

+1cc to Mr.N.Manoharan, Advocate SR.No.40116

+1cc to Mr.C.Prabakaran, Advocate SR.No.40131

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and
Crl.M.P.No.6859 of 2019

SR(CO)
GMY(18/11/2021)