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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.RC.No.1608 of 2017
and
Crl.M.P.No.16519 of 2017

Babu

... Petitioner

-Vs-

1. Banumathi
W/o. Babu

2. Minor Jayalakshmi
D/o. Babu
Rep. by her next friend natural Guardian
Banumathi

... Respondents

Prayer: Criminal revision is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records on the file the Learned Principal District and Sessions Judge, Vellore, Vellore District in Crl. R.P. No. 4 of 2017 dated 16.11.2017 and reversing order passed in M.C. No. 5 of 2012 on the file of the Learned Judicial Magistrate, Katpadi, Vellore District dated 26.12.2016 and set aside the order dated 16.11.2017.

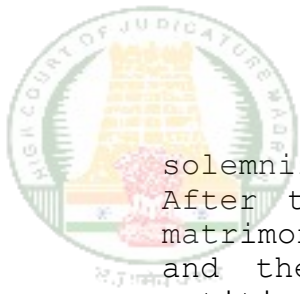
For petitioner : Mr. E.Kannadasan

For Respondents : Mr. Pa.Suresh Kumar

O R D E R

This Criminal Revision is filed to set aside the order in Crl. R.P. No. 4 of 2017 dated 16.11.2017 on the file of the learned Principal District and Sessions Judge, Vellore, Vellore District reversing the order passed in M.C. No. 5 of 2012 on the file of the Learned Judicial Magistrate, Katpadi, Vellore District dated 26.12.2016.

2. The revision petitioner is husband and the first respondent is wife and the second respondent is his daughter. The marriage between the petitioner and the first respondent was



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solemnized on 22.08.2001 as per the Hindu Rites and Customs. After the marriage, both of them were living together in the matrimonial home. Due to difference of opinion, the petitioner and the respondents were living separately. Thereafter, the petitioner filed a divorce petition before the Sub Court, Vellore on the ground of cruelty and desertion. During pendency of the case, the learned Judge, awarded a sum of Rs.5,000/- per month to the respondents as interim maintenance. Thereafter, the respondents filed a maintenance case before the learned Judicial Magistrate, Katpadi under Section 125 Cr.P.C. After hearing the matter elaborately, the learned Judge allowed the petition in part and awarded a sum of Rs.2,000/- per month to the second respondent towards maintenance. Challenging the order passed by the learned Judicial Magistrate, Katpadi, the respondents filed a petition before the learned Principal District and Sessions Judge, Vellore, and the same was taken on file in CRP.No.4/2017. After hearing both sides, the learned Judge, setting aside the order of the trial court, allowed the case and awarded a sum of Rs.5,000/- per month to the first respondent and Rs.3,000/- per month to the second respondent towards maintenance. Challenging the said order passed by the lower appellate Court, the husband/petitioner has filed the present revision before this Court.

3. The learned counsel for the petitioner submitted that the first respondent left the matrimonial home without any valid reason. Hence, she is not entitled to get maintenance from the petitioner and the petitioner is always ready for re-union with his wife and also to take care of his daughter, he tried to settle the issue. Hence, the learned counsel prays to set aside the order passed by the lower appellate Court.

4. The learned counsel for the respondents submitted that the petitioner used to drink alcohol and harassed the first respondent. Therefore, she came out from the matrimonial home. However, the petitioner has to maintain the respondents. Hence, the learned counsel prays to dismiss this petition.

5. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

6. A careful perusal of the records reveal that the marriage between the petitioner and the first respondent, the relationship of the parties as well as the fact that they are living separately are not in dispute. According to the petitioner, the first respondent left the matrimonial home without any reason and hence, she is not entitled to get maintenance. According to the first respondent, because of cruelty committed by the petitioner, she left the matrimonial home and she has no sufficient means to maintain herself and she



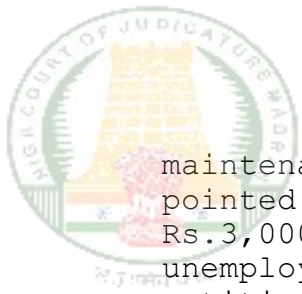
is depending upon the petitioner for her livelihood. The learned counsel for the petitioner submitted that he is ready and willing to join with the respondents, but the first respondent refused to live with the petitioner. The learned counsel for the petitioner fairly submitted that the petitioner is ready to pay a sum of Rs.3,000/- per month towards maintenance to the second respondent. The crucial issue in the present case is whether the first respondent is entitled to get maintenance from the petitioner or not. To appreciate the above, it is necessary to quote the relevant portion of Section 125(4) Cr.P.C. for better clarity :-

4) 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''

7. It is the claim of the 1st respondent wife that she left the matrimonial home due to the cruelty meted out to her by the petitioner, but a careful perusal of the materials on record reveals that the said claim has not been established by the 1st respondent before the trial court. The trial court has carefully discussed the phase of the matter and has arrived at a conclusion that inspite of the petitioner/husband calling upon the 1st respondent/wife to come and live with him, yet the 1st respondent had not heeded to the said call to go and live with him. A categorical finding has been recorded by the court below that the 1st respondent left the company of the petitioner without any sufficient reasons. In the aforesaid backdrop, the provisions of Section 125 (4) Cr.P.C. stands squarely attracted to the case on hand and, therefore, the refusal of the trial court to award any maintenance to the 1st respondent is wholly just and reasonable and deserves to be sustained and the lower appellate court ought not to have awarded any maintenance to the 1st respondent and to that extent the award of maintenance by the lower appellate court to the 1st respondent deserves to be interfered with.

8. However, the 2nd respondent, being the child of the petitioner is entitled to maintenance at the hands of the petitioner. The trial court, on the above, considering the duty of the petitioner to maintain the 2nd respondent, had awarded a sum sum of Rs.3,000/- per month to the second respondent as maintenance. Learned counsel appearing for the petitioner fairly conceded that the petitioner is ready and willing to pay the sum of Rs.3,000/-.

9. Though the petitioner concedes to pay the amount of



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maintenance awarded by the court below, however, it is to be pointed out that the amount awarded by the court below at Rs.3,000/- per month is too meagre. The 1st respondent is unemployed and the 2nd respondent, being the child of the petitioner, has to be brought up in a good manner, which will incur costs towards schooling and other expenses. Such being the factual position, this Court is of the considered view that a sum of Rs.5,000/- towards maintenance to the 2nd respondent per month would be just and reasonable.

10. In the aforesaid circumstances, the award of maintenance to the 1st respondent by the lower appellate court is set aside. However, the maintenance awarded at Rs.3,000/- by the lower appellate court to the 2nd respondent is enhanced to Rs.5,000/-, which shall be paid by the petitioner from the date of filing of the petition for maintenance.

11. Accordingly, this revision petition in CRP.No.4/2017 on the file of the Addl. District & Sessions Judge, Vellore, is allowed in part in the manner as stated above. Further, the petitioner is directed to pay a sum of Rs.5,000/- as monthly maintenance to the second respondent on or before 5th day of every English Calender month and further the petitioner is directed to deposit the entire arrears of maintenance as fixed by this Court, less the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge,
Vellore, Vellore District.
2. The Judicial Magistrate,
Katpadi, Vellore District.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.40674

Cr1.RC.No.1608 of 2017

RLD(CO)
SU(26/11/2021)