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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2021

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

CRL.RC.NO.1102 OF 2018

AND

CRL.MP.NO.12925 OF 2018

Rajesh Agarwal

... Petitioner/Respondent

-Vs-

Hemangee Agarwal

... Respondent/Petitioner

PRAYER:-

Criminal revision has filed under Section 397 and 401 of the Criminal Procedure Code, to set aside the order dated 12.07.2018 passed in MC.No.350 of 2010 by the VII Additional Principal Judge, Family Court, Chennai by allowing this Criminal Revision Petition.

For petitioner : M/s.Geeta Ramaseshan

For Respondent : M/s.C.Rekha Kumari

O R D E R

The Criminal Revision has been filed to set aside the order dated 12.07.2018 passed in MC.No.350 of 2010 by the VII Additional Principal Judge, Family Court, Chennai.

2. The revision petitioner is the husband and the respondent is his wife. The marriage between the petitioner and the respondent is second marriage and the said marriage had taken place on 02.12.2001. The respondent has a son through her first marriage. In the wedlock, the couples have no issues. After the marriage, the respondent lived in the matrimonial home. Subsequently, due to the difference of opinion, the respondent left the matrimonial home without any valid reason and the spouses were living separately. Hence, the respondent herein has filed a petition under Section 125 of Criminal Procedure Code, claiming maintenance of Rs.25,000/- per month, before the



learned Family Court, Chennai. The same was taken up on file in M.C.No.350 of 2010, which was allowed and the petitioner/husband was directed to pay a sum of Rs.10,000/- per month as maintenance to the respondent/wife. As against the order passed by the learned Family Court Judge, the petitioner has filed the present Criminal Revision before this Court.

3. The learned counsel for the petitioner submitted that during pendency of this petition, the petitioner filed a divorce petition in OP.No.462 of 2011 and also obtained divorce on the ground of desertion and cruelty vide order dated 04.03.2021. The learned counsel further submitted that the respondent made a false allegation against the petitioner and his family member and filed a criminal complaint under Section 498A of IPC and the same was also dismissed. Therefore the respondent is not entitled to get any maintenance from the petitioner. The Family Court has failed to consider all the fact and the respondent has been completed B.Ed., Course and the respondent's son, who born through her first marriage, has been completed B.E. Therefore, the respondent is not capable person for getting maintenance. The learned Family Court awarded a sum of Rs.10,000/- per month to the respondent is very high and he is not able to pay to the respondent. Therefore, the order passed by the learned Family Court is not fair, which warrants interference.

4. The learned counsel for the respondent submitted that when the divorce OP was in progress, the respondent has not appeared and produced any evidence to prove her case due to ill health. In the absence of her evidence, divorce was granted in favour of the petitioner. Due to cruelty committed by the petitioner and his family member, the respondent left the matrimonial home. Therefore, it is the duty of the petitioner that he has to maintain his wife. The Family Court rightly awarded a sum of Rs.10,000/- per month towards maintenance to the respondent, which does not any warrants interference of this Court.

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

6. The marriage between the petitioner and the respondent is not in dispute and the relationship between them is also not in dispute. During pendency of maintenance petition, the petitioner filed a divorce petition and the same was allowed in favour of him on the ground of cruelty and desertion. However, the learned counsel for the respondent submitted that due to ill health, the respondent has not produced any evidence before the trial Court at the time of hearing. If the respondent has proof to prove her case, she would have filed appeal before the appellate Court.



But she has not filed any appeal till date. Therefore, the respondent is not entitled to get maintenance from the petitioner and hence, this Court has no hesitation to set aside the order passed by the Family Court. Further, whatever the amount already paid towards maintenance in favour of the respondent, it need not be recovered. The petitioner is not liable to pay any future maintenance to the respondent.

7. In the result, the order in MC.No.350 of 2010 dated 12.07.2018 passed by the learned VII Additional Principal Judge, Family Court, Chennai is set aside and accordingly, this Criminal OP is allowed with the above terms. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The VII Additional
The Principal Judge,
The Family Court,
Chennai.

+1cc to M/s.C.Rekha Kumari, Advocate, S.R.No.55893
+3ccs to M/s.Geeta Ramaseshan, Advocate, S.R.No.55004

CRL.RC.NO.1102 OF 2018 AND
CRL.MP.NO.12925 OF 2018

SVI (CO)
PBS/08/12/2021