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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 10.12.2021

Delivered on : 21.12.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.230 of 2021

and

Crl.M.P.(MD)No.2389 of 2021

R.Muthumanikandan .. Revision Petitioner/ Respondent

Vs.

1.M.Rajalakshmi

2.Minor.Thenmozhi

.. Respondents/ Petitioners

(Rep.by her mother and guardian Rajalakshmi)

Prayer : This Revision Case is filed under Section 397 r/w. Section 401 of Cr.P.C., to call for the records and to set aside the order, dated 14.02.2020, in Crl.R.P.No.1 of 2018, on the file of the Principal District Judge, Madurai.

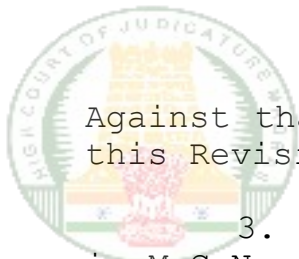
For Petitioner : Ms.B.Asha

For Respondents : Mr.R.Gowri Shankar

ORDER

This Criminal Revision has been filed against the order, dated 14.02.2020, in Crl.R.P.No.1 of 2018, on the file of the Principal District and Sessions Judge, Madurai.

2.The respondents herein / wife and the child filed a petition in M.C.No.26 of 2015, before the Judicial Magistrate, Tirumangalam, for maintenance. The Judicial Magistrate has ordered the revision petitioner / husband to pay a sum of Rs.5,000/- as maintenance to the second respondent herein / child and dismissed the petition against the wife. Against that order, the respondents herein has filed a revision in Crl.R.P.No.1 of 2018, on the file of the Principal District and Sessions Judge, Madurai, wherein, the District Judge has confirmed the order of the Judicial Magistrate, Tirumangalam, in awarding maintenance to the second respondent herein / child, in addition to that, awarded a sum of Rs.5,000/- per month for the maintenance of the first respondent herein /wife.



Against that order, the revision petitioner / husband has preferred this Revision.

3. On the side of the revision petitioner, it is stated that in M.C.No. 26 of 2015, the wife has admitted that on May - 2011, she came to Tirumangalam for voting in the election and then, she did not turn up, thereby, she admits that she has deserted her husband. No step was taken by the wife for re-union. The ingredients of Section 125 (4) of Cr.P.C is applicable to the first respondent / wife and she is not entitled for maintenance. She refused to live with her husband, without any sufficient reason. The petitioner is drawing a net salary of Rs.26,610/-, and is having a widowed mother, aged about 70 years. The wife cannot exhaust the entire income of the petitioner. Already he is paying Rs.5,000/- to the minor daughter. The Magistrate has rightly dismissed the petition regarding the maintenance to the wife and hence the order of the learned Principal District and Sessions Judge, Madurai, is to be set aside.

4. On the side of the revision petitioner/husband, it is stated that the husband has filed a divorce petition before the Sub Court, Tirumangalam, in H.M.O.P.No.190 of 2018. In I.A.No.346 of 2011, the Sub Court has ordered the petitioner / husband to pay a sum of Rs.3,000/- as maintenance to the wife. Against the order in the I.A. Petition, the husband filed a revision before this Court, in C.R.P.(MD)No.1096 of 2018. In the revision, this Court has confirmed the order of the Sub Court. The petitioner has to pay maintenance to the wife both in the H.M.O.P case and in the M.C. Case, which is unfair. The wife is filing various cases against the husband and his family members and the criminal case filed by the wife in C.C.No.21 of 2014, on the file of the Additional Mahila Court, Madurai, ended in acquittal, on 29.12.2015. Even after the acquittal of the case, the wife filed another complaint before the All Women Police Station and prayed the impugned order to be set aside.

5. On the side of the revision respondents, it is stated that it is the husband, who deserted the wife. The brother of the revision petitioner and the mother of the revision petitioner harassed the first respondent, in the year 2009 and they demanded Rs.50,000/- for getting a Government Job for the revision petitioner/husband. Hence, the father of the wife paid Rs.50,000/-. In the year 2011, again, there was dowry harassment and they demanded the jewels of the wife and they loaded all the house hold materials and shifted them to the house of the revision petitioner / husband. Only with the help of the neighbours, the wife was able to reach Madurai and she lodged a complaint before the All Women Police Station in Crime No.84 of 2011. Since the husband deserted the wife and the child, she filed another complaint in Crime No.13 of 2011. The jewels and the articles were not returned to the wife. The wife



confirmed.

6. The trial Court has come to the conclusion that the wife voluntarily deserted the husband and has dismissed the petition against the wife. A mere admission that the wife has not come to Tirumangalam, after the election is not sufficient enough to prove that the wife voluntarily deserted the husband. The allegation of the wife is that her entire house hold articles were removed by the husband and as there is no other option, she has to go to the house of her parents. It is seen that the wife filed complaints against the husband for dowry harassment. In the above circumstances, it is decided that the husband has failed to prove that the wife deserted him or went away, without sufficient reason.

7. The marriage is admitted. The paternity of the child is also admitted. The desertion by the wife is not proved by the revision petitioner/husband. Hence, it is decided that the wife is entitled for maintenance. On the side of the revision petitioner, it is stated that salary of the revision petitioner is only Rs.25,000/- and that he has to maintain his aged mother, who is suffering from illness. It is further submitted that the revision petitioner is paying maintenance in H.M.O.P.No.190 of 2011 in I.A.No.346 of 2011. Moreover, the revision petitioner/ husband is paying a sum of Rs.5,000/- as maintenance for the minor child. In view of the submission made by both sides, this Court fix the maintenance for the wife as Rs.3,000/- per month.

8. It is seen that the revision petitioner/ husband was ordered to pay Rs.3,000/- as maintenance in I.A.No.346 of 2011 in H.M.O.P.No.190 of 2011 and the order was confirmed by this Court in C.R.P.(MD)No.1096 of 2018. In view of the same, this Court directs the revision petitioner / husband is directed to pay a sum of Rs.3,000/- as maintenance, in I.A.No.346 of 2011 in H.M.O.P.No.190 of 2011, till the disposal of the H.M.O.P. After the disposal of the H.M.O.P petition, the revision petitioner / husband is directed to pay Rs.3,000/- as maintenance to the wife in M.C.No.26 of 2015.

8. With the above direction, this Criminal Revision Case is partly allowed. Consequently, connected Miscellaneous Petition is closed.

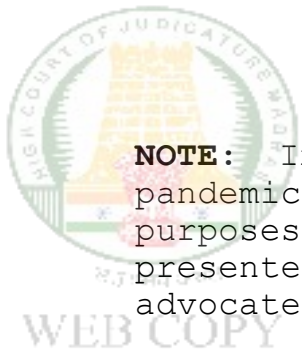
Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)



NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Principal District & Sessions Judge, Madurai.

2.The Sub Court, Tirumangalam.

3.The Judicial Magistrate, Tirumangalam.

4.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.B.ASHA, Advocate (SR-39750[F] dated 21/12/2021)

Crl. R.C.(MD)No.230 of 2021
21.12.2021

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