



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 24.03.2021

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THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C. (MD)No.599 of 2020

1.Asiq Ali
2.Noorjahan
3.Rubia Banu
4.Abdul Hakeem
5.Abbas Manthiri
6.Kamarnisha
7.Irfana Fathima

... Petitioners/Respondents

Vs.

1.Sheik Paritha
2.Mohamed Athiff

... Respondents/Petitioners

Prayer : This criminal revision case filed under Section 397 r/w. Section 401 of Cr.P.C., to call for the records relating to the order, dated 12.01.2018 in M.C.No.14 of 2014, on the file of the Judicial Magistrate, Ottanchatram and to set aside the same.

For Petitioners : Mr.Ajmal Khan, Senior counsel
for M/s.Ajmal Association

For Respondents : Mr.T.Thirumurugan

ORDER

This Criminal Revision Case has been filed to set aside the order, dated 12.01.2018 in M.C.No.14 of 2014, on the file of the Judicial Magistrate, Ottanchatram

2.The first revision petitioner is the husband and the revision petitioners 2 to 7 are the in-laws of the first respondent. The first respondent is the wife of the first revision petitioner and the second respondent is their minor son. The respondents filed a petition against the revision petitioners before the Judicial Magistrate, Ottanchatram, in M.c.No.14 of 2014. The trial Court ordered for a maintenance of Rs.10,000/- for each of the respondents. Against that order, the petitioner filed this Criminal Revision.



3. On the side of the revision petitioners, it is stated that the first revision petitioner / husband is a physically challenged person, he lost his employment and is waiting for an opportunity to return back to India. Revision petitioners 2 to 7 are not necessary parties in the case and the revision first respondent / wife wantonly implead them unnecessarily. The first petitioner being a Muslim need not pay any maintenance under the Muslim Women (Protection of Rights on Divorce) Act, 1986 and he is bound to pay lump sum amount that too only for the idat period. The impugned order is almost an ex parte order, wherein, the counsel, engaged by the revision petitioners, failed to appear before the trial Court and prayed the case to be remitted back to the lower Court for fresh consideration after giving opportunity to both parties.

4. On the side of the respondents, it is stated that even before the marriage, even from his childhood the first revision petitioner/ husband is a physically challenged person and the first respondent / wife did not desert the husband. It is the husband who deserted the wife. At the time of marriage itself, there was dowry demand and again, at the time of delivery, there was dowry demand. The salary of the first revision petitioner / husband is Rs.54,340/-, which was proved by Ex.P3. The first revision petitioner / husband though physically challenged is earning with his knowledge, there was no rebuttal evidence to dis-prove the income. A friend of the first revision petitioner has deposited the maintenance amount before the Court stating that the first revision petitioner / husband is working Abroad and could not be present before the Court, this itself shows that the first revision petitioner is working Abroad and he is capable of paying maintenance. The first revision petitioner/husband is having properties and he is earning Rs.10,00,000/- (Rupees Ten Lakhs only) per year as income from the property and prayed the revision to be dismissed.

5. This Court has already ordered the first revision petitioner / husband to deposit 50% of the maintenance amount awarded by the trial Court to be deposited in the trial Court. It is seen that the first revision petitioner/ husband is complying that condition. A perusal of the impugned order reveals that the first revision petitioner/ husband has filed a counter before the trial Court, he has cross examined the witnesses. When the matter was posted for examination of respondents' side witnesses, there was no representation on the side of the revision petitioners and hence a speaking order was passed by the trial Court.

6. In view of the same, the impugned order is set aside. The matter is remanded back to the trial Court for fresh disposal in accordance with law, after giving opportunities for both parties to let in evidence. The revision petitioners are directed to co-operate the trial. The first revision petitioner / husband is hereby directed



to continue to deposit 50% of the monthly maintenance amount before the trial Court, till the disposal of the case.

7.The first respondent / wife is entitled to withdraw the arrears of maintenance amount as well as the monthly maintenance amount from the trial Court.

8.The first revision petitioner is permitted to attend the trial through video conferencing system. The trial Court is hereby directed to dispose of the case within a period of **eight months** from the date of receipt of copy of this order.

9.With the above directions, this Criminal Revision Case is disposed of.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

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 Judicial Magistrate, Ottanchatram
2. The Section Officer,
Criminal Section (Records), (2 Copies)
Madurai Bench of Madras High Court,
Madurai. (Soft Copy)

Copy To:-

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai. (Soft Copy)

+1 CC to Mr.T.THIRUMURUGAN, Advocate (SR-13388[F] dated 24/03/2021)
+1 CC to M/s.AJMAL ASSOCIATES, (SR-13537[F] dated 25/03/2021)

LS

TE : 30/03/2021 : 3P/7C

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