



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.RC(MD)No.487 of 2020

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Veerapandi

: Petitioner/Respondent

Vs.

1.Suganya Devi

2.Mithra (Minor)

: Respondents/Petitioners

(Minor 2nd Respondent represented

by the 1st respondent/mother)

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure against the order passed in MC No.60 of 2018, dated 17.02.2020 on the file of the Family Court, Sivagangai.

For Petitioners : Mr.J.John

For Respondents : Mr.K.P.Ramesh

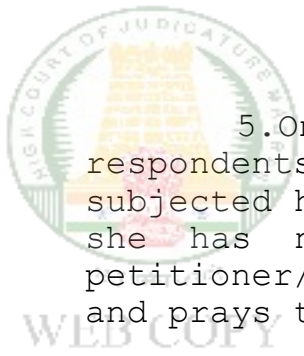
J U D G M E N T

This Criminal Revision is directed against the order passed in MC No.60 of 2018, dated 17.02.2020 on the file of the Family Court, Sivagangai.

2.It is seen from the records that the marriage between the petitioner/husband and the 1st respondent/wife was solemnized on 27.08.2015. Out of the wedlock, they begotten a child, who is the 2nd respondent herein. Due to matrimonial tiff, the petitioner/husband filed HMOP No.224 of 2018 on the file of the Family Court, Sivagangai, for divorce. At that same time, the 1st respondent/wife filed MC No.60 of 2018 seeking maintenance for her and her child, namely the 2nd respondent herein. Based on the petition filed by the petitioner/husband, the trial court has granted decree for divorce in HMOP No.224 of 2018. The trial court has also allowed the MC NO.60 of 2018 filed by the respondents herein, by order, dated 17.02.2020 and thereby awarded monthly maintenance for a sum of Rs.5,000/- each to the respondents herein. Aggrieved by the order, dated 17.02.2020 made in MC No.60 of 2018, on the file of the Family Court, Sivagangai, the petitioner/husband is before this court.

3.Heard the learned counsel appearing on either side and perused the materials available on record.

4.The main contention raised by the petitioner/husband is that his wife without any sufficient cause, deserted him and further, she is a M.E Decree Holder and she has means to maintain herself and her wife subjected him to cruelty and due to it, he filed HMOP No.224 of 2018 for divorce and decree of divorce was granted and hence, the petitioner/husband is not liable to pay any maintenance and prays that the Criminal Revision has to be allowed.



5. On the other hand, the learned counsel appearing for the respondents submitted that the petitioner/husband demanded dowry and subjected her to cruelty and drove her from the matrimonial home and she has no means to maintain her and her children and the petitioner/husband is liable to pay maintenance to the respondents and prays that the Criminal Revision has to be dismissed.

6. It is admitted on both sides, the marriage solemnised between the petitioner/husband and the 1st respondent/wife and the 2nd respondent is their child. In this case, it is to be decided whether without any sufficient cause, the 1st respondent/wife deserted from the matrimonial home and whether the 1st respondent/wife has means to maintain her or not.

7. Further, it is admitted on both sides that the petitioner/husband is working as a Software Engineer. Before the trial court, the petitioner/husband himself was examined as RW1. RW1 during his evidence stated that due to cruelty by his wife, he left his job and now, he is unemployed. To prove the fact that he left the job and removed from service, no document was filed. The petitioner/husband is a Software Engineer and it is easier for him to get a new job at any time in the IT Profession. Without filing any document to show that at the time of filing the maintenance petition, he was unemployed, the contention of the petitioner/husband that he was unemployed at the relevant point time is not at all acceptable.

8. Before the trial court, the 1st respondent/wife was examined as PW1. PW1 stated during her evidence that her husband demanded Rs.10 Lakhs and two wheeler and subjected her to cruelty. But to prove the above contention, she has not given any complaint to the police. It was admitted by PW1 during her cross examination that the petitioner/husband has filed HMOP No.224 of 2018 for divorce. PW1 also admitted during her cross examination that only after her husband filed HMOP No.224 of 2018 for divorce, she filed the maintenance MC No.60 of 2018.

9. As per the version of PW1, her husband demanded dowry and due to it, she left from the matrimonial home. It is to be noted here that when the 1st respondent/wife came to her parental home, she has not taken any steps for reunion. Further, PW1 has not filed any petition for restitution of conjugal rights. If really the petitioner/husband subjected her to cruelty and drove from the matrimonial home, she will definitely give a complaint to the police. But in this case, the 1st respondent/wife filed a petition in DVOP No.12 of 2018 on the file of the Judicial Magistrate Court against her husband and his family members, only after her husband filing the petition in HMOP No.224 of 2018 for divorce.

10. On careful perusal of the entire materials available on record, it reveals that without any sufficient cause, the 1st respondent/wife deserted her husband. At this juncture, it is



necessary to refer section 125 of the Criminal Procedural Code, which would run thus:-

"125. Order for maintenance of wives, children and parents.

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(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation.- For the purposes of this Chapter,-

(a) " minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

(b) " wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.



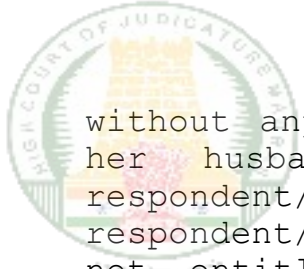
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(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(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.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."



without any sufficient cause, the 1st respondent/wife had deserted her husband. Further, it is admitted fact that the 1st respondent/wife is M.E Decree Holder. Hence, it is held that the 1st respondent/wife is able to maintain herself and therefore, she is not entitled to any maintenance from her husband namely the petitioner herein. However, it is significant to mention here that RW1 during his cross examination has admitted that he has not maintained his child namely the 2nd respondent till date. It is needless to say that it is the duty of the father to maintain his children. Hence, it is ordered that the petitioner, being the father of the 2nd respondent is liable to pay maintenance at Rs.5,000/- per month to his child as ordered by the trial court. As already discussed above, the 1st respondent/wife had sufficient means to maintain herself, she is not entitled to maintenance from her husband namely the petitioner herein.

12. For all the reasons stated above, this Court is of the considered view that the 1st respondent/wife is not entitled to any maintenance from the petitioner and hence, in respect of the maintenance ordered by the trial court to the 1st respondent/wife is liable to be set aside.

13. In the result, this Criminal Revision is partly allowed. The impugned order, dated 17.02.2020 passed by the Family Court, Sivagangai, is set aside, in respect of maintenance payable to the 1st respondent/wife alone. In other aspects, the findings of the trial court is confirmed. The petitioner/husband is directed to pay the maintenance amount of Rs.5,000/- per month to the 2nd respondent/child, as ordered by the trial court, till she attains majority.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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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,

The Family Court,
Sivagangai.