



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 15.09.2021

CORAM

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

Crl.RC(MD)No.381 of 2021

and

Crl.MP(MD)No.3942 of 2021

M.Murugan : Petitioner/Respondent

Vs.

1.Bagavathy

2.Minor Ramya Krishnan

3.Minor Ganesh Kumar

3

: Respondent/Petitioners 1 to

(Minor respondents 2 and 3
represented by their mother
and natural guardian 1st respondent)

Prayer: Criminal Revision filed under section 397(1) r/w 401 of the Code of the Criminal Procedure, against the order passed in Maintenance Case No.48 of 2019, dated 16.03.2021 on the file of the Family Court, Tirunelveli.

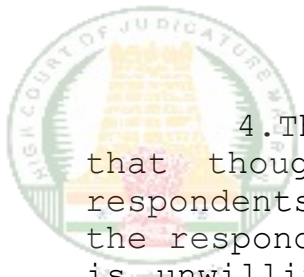
For Petitioner : Mr.I.Robert Chandrakumar
For Respondents : Mr.K.Rajeshwaran

O R D E R

This Criminal Revision is directed against the order passed in Maintenance Case No.48 of 2019, dated 16.03.2021 on the file of the Family Court, Tirunelveli.

2.It is seen from the records that the marriage between the petitioner/husband and the 1st respondent/wife was solemnized on 14.06.2006. Out of the wedlock, they begotten two child, who is the respondents 2 and 3 herein. Due to matrimonial tiff, the respondents herein filed MC No.48 of 2019 on the file of the Family Court, Tirunelveli, seeking maintenance for her and her two child, namely the respondents 2 and 3 herein. After full fledged trial, the trial Court partly allowed the MC No.48 of 2019 filed by the respondents herein, by order, dated 16.03.2021 and thereby awarded monthly maintenance for a sum of Rs.5,000/- each to the respondents 1 to 3 herein. Aggrieved by the order, dated 16.03.2021 made in MC No.48 of 2019, on the file of the Family Court, Tirunelveli, 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 though the petitioner is ready to lead a life with the respondents, the trial court ordered to pay a sum of Rs.15,000/- to the respondents as maintenance and it is the 1st respondent/wife, who is unwilling to live with the petitioner/husband and now, the 3rd respondent is living with this petitioner and the petitioner is taking care of him and the petitioner is also paying the rent of Rs.3,500/- per month for the house, where the respondents 1 and 2 resided 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 lived with another lady and due to it, he drove his wife from the matrimonial home and the 1st respondent/wife 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 solemnized between the petitioner/husband and the 1st respondent/wife and the respondents 2 and 3 are 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 Driver in Tamil Nadu Transport Corporation. Before the trial court, the petitioner/husband himself was examined as RW1. He deposed that he is working as a Driver in the Tamil Nadu Transport Corporation and he was earning Rs.60,000/- per month. Before the trial court, the 1st respondent/wife was examined as PW1. PW1 stated during her evidence that she has no means to maintain her and her elder daughter.

8. 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.

(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



WEB COPY

(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.

(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



the petitioner as ordered by the trial court and in respect of the maintenance ordered by the trial court, since the 3rd respondent is living with his father namely the petitioner herein, the maintenance ordered by the trial court is set aside as against the 3rd respondent.

WEB COPY

11. In the result, this Criminal Revision is partly allowed. The impugned order, dated 16.03.2021 passed by the Family Court, Tirunelveli, is set aside, in respect of maintenance payable to the 3rd respondent, who is living with his father namely the petitioner herein. In other aspects, the findings of the trial court is confirmed. In the event of failure to maintain the 3rd respondent by the petitioner, the 3rd respondent is at liberty to get maintenance amount on the application filed by the 1st respondent, who is the mother of the 3rd respondent, as ordered by the trial court, till he attains majority. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

er

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,
Tirunelveli.

Copy to

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

+1 CC to M/s.K.RAJESHWARAN, Advocate (SR-29545[F] dated
17/09/2021)

Cr1.RC(MD)No.381 of 2021
15.09.2021

PS (CO)

KB(23.09.2021) 5P 5C

<https://hcservices.ecourts.gov.in/hcservices/>