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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 11.11.2021
PRONOUNCED ON : 03.12.2021
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.507 of 2021

and

Crl.M.P.(MD)No. 5500 of 2021

Sivasankar

.. Petitioner/Respondent

Vs.

Ganga

.. Respondent/Petitioner

Prayer : This Revision Case is filed under Sections 397 r/w. Section 401 of Cr.P.C., to call for the records and set aside the order passed in Maintenance Case No.30 of 2019, dated 10.03.2021, on the file of the Family Court, Sivagangai.

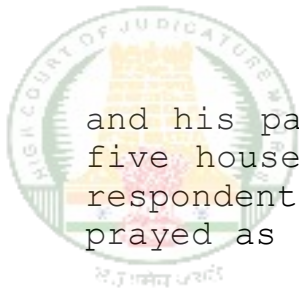
For Petitioner : Mr.K.Gurunathan
For Respondent : Mr.R.Srinivasan

ORDER

The revision is filed against the order in M.C.No.30 of 2019, on the file of the Family Court, Sivagangai. The petitioner herein is the respondent in the petition and respondent herein is the petitioner in the original petition.

2.Brief substance of the petition, in M.C.No.30 of 2019, is as follows:

The marriage of the petitioner and the respondent was solemnized on 09.11.2016 as per the Hindu rituals. After the marriage they lived together in the joint family of the respondent and the petitioner came to know that the respondent cheated the petitioner regarding the educational qualification and the job. The father of the petitioner died in an accident and the mother obtained loan for the marriage of the petitioner. Later the petitioner came to know that the respondent is not fit for matrimonial life and he is impotent. The parents of the respondent scolded the petitioner as if she is barren and she could not bear a child. The petitioner was harassed by the respondent and his parents. On 11.12.2018, the respondent and his parents drove the petitioner away from the matrimonial house. The respondent is earning Rs.50,000/- by doing transport service for IT Companies. The respondent is having a house worth Rs.40,00,000/- in Madurai, Thirumohur Village, he is having a three storeyed building consisting of six houses in Chennai, Palavakkam and the respondent



and his parents lived in one of the house and he rented the other five houses and is earning Rs.1,00,000/- as rental income but the respondent failed to maintain the petitioner and the petitioner prayed as sum of Rs.20,000/- per month as maintenance.

3. Brief substance of the counter filed by the respondent, in M.C. No.30 of 2019, is as follows:

The house in Chennai belonged to the father of the petitioner. The house was the self acquired property of the father. The jewels given to the petitioner at the time of marriage were with her. At the time of marriage, the respondent was working in a Maruthi Suzuki Car Company and was earning Rs.25,000/- per month. The petitioner worked in Anand Engineering College, Kelampakkam. The petitioner got pregnant and the doctor reported that the heart beat of the child is very low and the petitioner went to her parents house and without the knowledge of the petitioner she aborted the child and refused to live with the respondent. The mother of the petitioner demanded Rs.5,00,000/- from the respondent and since the respondent was not in a position to give that amount, the petitioner indulged in creating problems and she refused to do the household works. The father of the respondent was having cancer and the respondent borrowed amount from others and he sold some of the properties to meet out the medical expenses. Without considering the situation, the petitioner and her mother were demanding Rs.2,00,000/- from the respondent. During the month of December 2018, the petitioner went to her parents house for vacation and later she refuses to come back to the matrimonial home. The efforts taken by the respondent to bring back the petitioner went in vain. She admitted before the Panchayatdar that she is not willing to live with the respondent. The allegation that the respondent is impotent amounts to cruelty and the abortion was suppressed by the petitioner. The petitioner is working as a Teacher and is earning Rs.10,000/- per month she is having a house at Singampunari worth about Rs.50,00,000/- she rented two houses and was earning Rs.15,000/- per month. The petitioner is having five acres of land at Thirumangalam. She is having sufficient means to maintain herself,

4. After examining the witnesses, the Family Court has passed an order directing the respondent to pay a sum of Rs.10,000/- per month as maintenance to the petitioner. Against the order, the petitioner has filed this revision.

5. On the side of the revision petitioner/ husband, it is stated that the Family Court failed to consider that the wife was not forcibly sent out from the matrimonial house on 11.12.2018. The petitioner and the respondent were living separately and there is no question of the parents of the husband forcibly driven out the wife. She went out on her own accord and hence she is not



entitled for maintenance.

6.On the side of the revision petitioner/ husband, it is stated that the wife has not taken any legal steps for reunion, she has admitted that no complaint was filed against the husband or the in-laws. Under Section 125 of the Criminal Procedure Code, the wife is not entitled for maintenance when she left the matrimonial house without any sufficient reason.

7.On the side of the revision petitioner, it is stated that the wife left the matrimonial home without any justifiable ground and hence, she is not entitled for maintenance.

8.To substantiate the contention that the wife is not entitled for compensation, the learned Counsel for the husband cited a judgment of the **Chatisgarh High Court in Crl.M.P.No.303 of 2008, dated 09.04.2010**, which reads as follows:

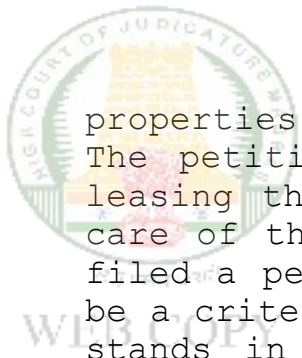
"4.Considering the evidence adduced by the parties learned Magistrate had passed the order holding that without any sufficient cause the applicant is living separately and she has failed to prove her case for maintenance from the respondent/husband. In revision, the revisional Court has also confirmed the order passed by the learned Magistrate by order impugned."

9.On the side of the revision petitioner, a judgment of the Hon'ble Supreme Court reported in **AIR 2003, (3174)** is cited. A Similar judgment of the Kolkata High Court in CRR No.2649 of 2008, dated 12.02.2010, is cited on the side of the revision petitioner.

10.The wife tried to live with her husband but the husband refused to live with his wife and in the evidence of the husband, he has clearly admitted that he is not willing for re-union.

11.On the side of the respondent/wife, it is stated that the husband has admitted in his evidence that he is having a house at Madurai, Thirumohur and at Chennai, Palavakkam. Financial status of the husband was admitted by him and Rs.2,90,000 is pending as arrears of maintenance. Though the father of the petitioner is said to be undergoing treatment, on 12.11.2018, the husband has obtained a loan for purchasing a car and he is paying Rs.17,000/- as EMI but the husband was not willing to pay atleast 50% of the arrears of the maintenance amount, though such a suggestion was made by the previous Judge.

12.The revision petitioner who is not familiar with the Court proceedings, has mechanically accepted the vague statements
<https://hsevjcservices.in/tickets> according to the asserts of the petitioner. In reality of the



properties are standing in the name of the petitioner's mother. The petitioner is not having properties of his own and only by leasing the properties, the petitioner and his mother are taking care of the father. The petitioner could not secure a job and he filed a petition for divorce and filing a divorce petition cannot be a criteria for awarding maintenance. The bank loan for the car stands in the name of the mother of the husband. The husband educated the wife to complete M.Phil Course. Now, the husband could not get any work and he is working only as an acting driver.

13.On the side of the revision petitioner it is stated that as per the dictum laid down by the Hon'ble Supreme Court in Crl.A.No.730 of 2020, instructions were given to all the Courts dealing with maintenance cases to obtain affidavits regarding the assets and liabilities statement of both the parties. It is stated that the Family Court failed to get the affidavits and that the matter has to be remitted back to the Family Court for getting affidavits regarding the assets of the parties.

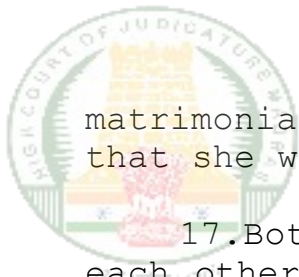
14.On the side of the revision petitioner, it is stated that the Family Court failed to rely on the dictum of the Hon'ble Supreme Court in ***Rajnesh Vs Neha reported in 2020 SCC online SC (903)***. The Family Court has failed to ascertain the assets and liabilities by getting affidavits from the parties since the wife is propagating that the husband is impotent, that amounts to cruelty and on the ground of cruelty, the learned Counsel for the revision petitioner has relied upon a judgment of the Hon'ble Supreme Court reported in ***2020 SCC Online SC 903*** is cited, wherein, it is stated as follows:-

"b.Payment of Interim Maintenance

The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I,II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court/District Court/Magistrates Court, as the case may be, throughout the Country."

15.On the side of the respondent, it is stated that this case was taken up for trial within a period of two months from the date of the Judgment of the Hon'ble Supreme Court. Both side have not filed affidavits and hence the husband cannot blame the wife or the Court. The husband has not filed any affidavit before the Trial Court and hence, the husband cannot raise the point before this Court.

16.The marriage between the petitioner and the respondent was solemnized and the case of the husband is that the wife left the



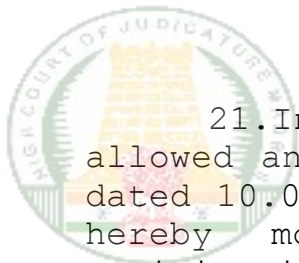
matrimonial house on her own accord and the case of the wife is that she was driven out from the matrimonial home.

17.Both the husband and wife are raising allegation against each other. It is stated that the husband used to scold the wife as 'barren' and that the wife used to blame the husband as impotent. But the husband has admitted that the wife has undergone an abortion without his knowledge. There is no necessity to decide this issue in this petition.

18.On the side of the husband, it is stated that the wife has not taken any steps for re-union. But the husband has admitted that though the wife has taken steps for reunion he has refused to live together. Hence the husband cannot claim that the wife left him on her own accord. On the side of the wife, it is stated that the husband is having house properties in Madurai, Thirumohur and at Chennai, Palavakkam. The averment of the husband is that both the houses are in the name of the mother of the husband and that the houses are the self acquired properties of the father of the husband. But, no documents is filed on the side of the husband to prove that the house property is in the name of the mother or in the name of the father. In the deposition of the husband, he has admitted that he is having a house at Madurai and a house at Chennai.

19.The husband has not filed any documents to prove that the wife is having properties or she is having income. It is stated that the wife worked as an Assistant Professor in Anand Institute of Higher Technology, Chennai. The certificate is dated 04.09.2018, now the wife is not residing in Chennai and she is residing at Singampunari Village and the husband failed to produce any documents to prove the income of the wife, at the time of filing the M.C. Petition.

20.For the reasons stated above, it is decided that the husband was not willing to live with his wife, even though steps were taken by the wife for reunion. The husband has admitted that he is having properties worked as a Technical Advisor, Service Department in Maruthi Suzuki Service Centre from August 2013 to October 2018. Documents are filed on the side of the husband stating that his father is having cancer and he is undergoing treatment. Hence, the revision petitioner / husband is directed to pay a sum of Rs.8,000/- as maintenance for the respondent / wife. The husband is directed to deposit the arrears of maintenance within a period of two months from the date of receipt of copy of this order and he is further directed to pay the monthly maintenance amount on or before the seventh day of every English Calendar month.



21.In the result, the Crl.R.C(MD).No.507 of 2021 is partly allowed and the order passed in Maintenance Case No.30 of 2019, dated 10.03.2021, on the file of the Family Court, Sivagangai, is hereby modified. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

lr/sn

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.

+1 CC to M/s.K.GURUNATHAN, Advocate (SR-37180[F] dated 03/12/2021)
+1 CC to M/s.R.Srinivasan, Advocate (SR-37183[F] dated 03/12/2021)

**Crl. R.C. (MD)No.507 of 2021
and
Crl.M.P. (MD)No. 5500 of 2021
03.12.2021**

SR (CO)
SB(13.12.2021) 6P 4C