



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 27.09.2021
PRONOUNCED ON: 23.11.2021
CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C. (MD) .No.10 of 2018

WEB COPY

S.Murugesan : Petitioner / Respondent

Vs.

1.S.Kavitha
2.M.Nishanth Kumar : Respondents/Petitioners

PRAYER: Criminal Revision Petition has been filed under Section 397(1) and 401 of Cr.P.C, against the order dated 24.08.2017, made in M.C.No.90 of 2014, on the file of the Family Court, Dindigul, seeking to set aside the same.

For Petitioner : Mr.A.Sivasubramanian
For Respondents : Mr.J.Lawrence

ORDER

This Criminal Revision Petition is directed against the order passed in M.C.No.90 of 2014, dated 24.08.2017, on the file of the Family Court, Dindigul.

2. It is not in dispute that the marriage between the revision petitioner and the first respondent was solemnised on 09.06.1995, that due to their wedlock, the second respondent was born on 27.07.1996 and that subsequently, there arose misunderstanding between them and are living separately. The first respondent along with her son/second respondent has filed a petition under Section 125 Cr.P.C., in M.C.No.90 of 2014, before the Family Court, Dindigul, claiming monthly maintenance at Rs.20,000/- for her and Rs.15,000/- for her son. The revision petitioner/respondent has filed counter statement disputing the liability and quantum of compensation claimed by the respondents herein.

3. The learned Judge, Family Court, upon considering the evidence adduced and on hearing the arguments of both sides, has passed the impugned order dated 24.08.2017, directing the respondent / husband to pay a sum of Rs.20,000/- p.m., from the date of petition along with the cost of Rs.2,000/- and dismissed the petition as against the second respondent herein, as he had attained majority. Aggrieved by the said order, the husband has come forward with the present Criminal Revision Petition.



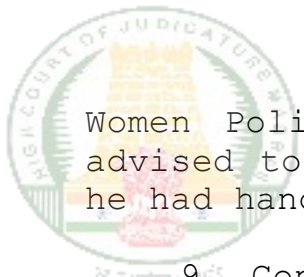
4. Whether the impugned order passed in M.C.No.90 of 2014, dated 24.08.2017, on the file of the Family Court, Dindigul, is liable to be set aside? is the point for consideration.

5. The revision petitioner/husband and the first respondent/wife, as usual in matrimonial proceedings, have raised allegations and counter allegations against each other. The revision petitioner has challenged the liability to pay maintenance on the ground that the first respondent, on her own volition, deserted the revision petitioner and refused to live with him.

6. It is not in dispute that the revision petitioner has already filed a petition in H.M.O.P.713 of 2013 against the first respondent seeking divorce and that the same is pending on the file of the Family Court, Dindigul. Admittedly, the revision petitioner has not chosen to file a copy of the divorce petition and as such, it is not known the grounds on which, he has claimed divorce. As per Section 125(4) Cr.P.C., the husband is not liable to pay maintenance to his wife, in case, if he proves that she is refusing to live with him without any sufficient reason or ground, or that if he proves that she is living in adultery.

7. In the case on hand, the main contention of the first respondent/wife is that the petitioner is having illicit intimacy with one Padmavathy and that he had treated her with cruelty. It is the further case of the first respondent that she was forced to leave the matrimonial house on 31.01.2012. No doubt, the petitioner has disputed the charge of illicit intimacy and also the plea of cruelty taken by the first respondent. But according to him, the first respondent alone had treated him with cruelty, that the first respondent by herself picked up quarrel on 31.01.2012 and by taking her personal belongings like jewellery etc., left the house of the petitioner along with her son. But, as rightly pointed out by the learned trial Judge, that after the alleged incident on 31.01.2012, the first respondent had lodged a police complaint with the Thallakulam All Women Police Station. The petitioner has himself admitted that subsequently, the first respondent has lodged another complaint in November 2012. As rightly observed by the learned trial Judge, at the time of preferring those police complaints, the same are being lodged without anticipation of divorce proceedings, which were instituted in the year 2013 or maintenance proceedings in the year 2014.

8. Moreover, though the petitioner, in paragraph No.5 of his counter statement, has stated that on 31.01.2012 itself, his wife had taken all her belongings, like jewellery and other articles and left the matrimonial house, in paragraph No.7 of his counter statement, has stated that at the time of enquiry before the All



Women Police Station, Thilagar Thidal in November 2012, he was advised to hand over all the sridhana properties and accordingly, he had handed over all the articles to her.

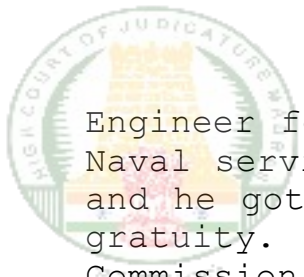
9. Considering the above contradictions in the stand of the petitioner, the learned trial Judge has rightly observed that when the wife was sent out, her belongings were retained by the petitioner, the natural inference would be that she was sent out in an unexpected manner. The above factum can also be inferred from the lodging of police complaint by the first respondent on 01.12.2012 itself.

10. In the written arguments, the revision petitioner has stated that he had tried his level best to bring back his wife to the matrimonial home, but all had gone in vain and that since there is no neglect on the part of the husband, the wife is not entitled to claim maintenance. But admittedly, the petitioner has not produced any material or evidence to show that he had taken necessary action or proceedings to join with the first respondent. In the absence of any evidence and also considering the contradictory stand of the petitioner, the contention of the revision petitioner that the first respondent alone had deserted him is devoid of substance and the same is liable to be rejected.

11. Now turning to the quantum of maintenance, as already pointed out, the learned trial Judge has granted monthly maintenance of Rs.20,000/- to the first respondent. The case of the first respondent is that the petitioner is getting military pension of Rs.10,000/-p.m., as he had worked as Engineer in the Army and that he is now working as Engineer in the Rural Development Department and is getting monthly salary of Rs.50,000/-.

12. The defence of the petitioner is that the first respondent is owning a house building in K.K.Nagar, Madurai, that she is running a fancy store in Dindigul town and is earning not less than Rs.50,000/- p.m., and that she had suppressed her income and wealth, with an intention to grab money from the petitioner. But in the trial, the petitioner has specifically admitted that the house property in K.K.Nagar, Madurai is owned by the mother of the first respondent and it is not the property of the first respondent. Though the petitioner had alleged that the first respondent is running a fancy store and getting more than Rs.50,000/-p.m., he has not adduced any iota of evidence to substantiate the same.

13. It is pertinent to mention that though the petitioner has disputed the receipt of military pension, admitted his service in military. He would admit specifically that he had been a Naval



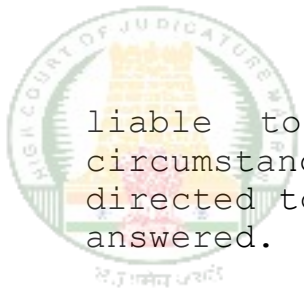
Engineer for 14 years, but according to him, he was relieved from Naval service only to appoint in the Tamil Nadu Government service and he got relieved without any benefit including the pension and gratuity. In cross-examination, he would admit that One Man Commission was appointed subsequent to Sixth Pay Commission, that a case was pending before the High Court as well as before the Honourable Supreme Court, challenging the recalling of One Man Commission's recommendations, appointed subsequent to Sixth Pay Commission and that he has been receiving monthly salary of Rs.45,000/-. The petitioner has only produced the copies of G.O.Ms.No.242, dated 22.07.2013 and the Policy Note for the year 2016-2017 of the Rural Development and Panchayat Raj Department of Tamil Nadu Government as Exs.R.1 and R.2 respectively.

14. Admittedly, the petitioner has not chosen to produce the relieving orders issued by Navy and the joining order issued by the Rural Development Department, nor the salary certificate nor pay slip issued by the Rural Development Department. It is pertinent to mention that the first respondent, in paragraph No.9 of his counter statement, has specifically stated that himself and his parents are living only by his pension amount. As already pointed out, he has given evidence that he was not given any benefits, after relieving from the Naval service, including pension and gratuity.

15. Considering the above, as rightly observed by the learned trial Judge, he has concocted a story only to avoid the payment of maintenance. Even according to the petitioner, the first respondent is living now in Dindigul and in the absence of any evidence to show that she is employed and is getting good income, she has to be provided for her food, clothes, shelter and for other expenses. As rightly observed by the trial Court, the quantum cannot be fixed by rationing her requirements sufficient to keep her alive.

16. As rightly pointed out by the learned Counsel for the respondents, the petitioner has suppressed his salary particulars and he has also not filed any records or Income-Tax Returns or Bank Passbooks to prove his income. No doubt, the petitioner is also duty bound to maintain his aged father and that he has to share the duty with his brother.

17. Considering the above facts and circumstances and also the status of the parties and the present economic scenario, the fixation of monthly maintenance at Rs.20,000/- to the first respondent by the learned Judge, Family Court, Dindigul cannot be found fault with and the same is very much reasonable and cannot said to be excessive. Hence, this Court concludes that this Criminal Revision Petition is devoid of merits and the same is



liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are directed to bear their own costs. Accordingly, the above point is answered.

18. In the result, this Criminal Revision Petition is dismissed. The parties are directed to bear their own costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

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Sub Assistant Registrar(CS)

SSL

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 Judge, Family Court, Dindigul.

Copy to

The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J. LAWRENCE, Advocate (SR-35590[F] dated 24/11/2021)
+1 CC to M/s.A. SIVASUBRAMANIAN, Advocate (SR-35701[F] dated 24/11/2021)

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DKS (CO)

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