



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1.OP(MD)No.23471 of 2016

Jahir Hussain

: Petitioner

Vs.

1.Mehraj Ghani

2.Minor Rahamannuthushia

Rep. by her mother,

the 1st respondent

: Respondents

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to call for the records in Cr1.RC.No.18 of 2016 dated 01.11.2016, on the file of the Additional District Court, Kumbakonam, confirming the order in M.C.No.62 of 2015 dated 28.03.2016 passed by the learned Chief Judicial Magistrate, Thanjavur at Kumbakonam.

For Petitioner : Mr.M.Vijayarathinam

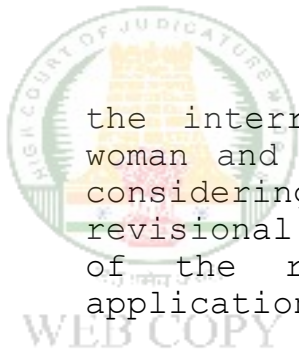
For Respondents : No appearance

ORDER

This Criminal Original Petition is filed by the petitioner as against the orders passed by the Courts below on the application filed by the respondent for maintenance.

2. The first respondent filed an application for maintenance before the learned Chief Judicial Magistrate, Thanjavur in M.C.No.62 of 2015 that the marriage between her respondent and the petitioner was solemnized on 01.05.1994 and out of the wedlock, they are having two children. It is her case that she was driven out of the matrimonial home and therefore, she filed the said application for maintenance for herself and for her minor children. The trial Court, by order dated 28.03.2016, allowed the petition and as against the same, the petitioner has preferred a revision petition before the learned Additional District Judge, Kumbakonam. The said revision was also dismissed and as against these orders, the present application is filed.

3. Learned Counsel for the petitioner submitted that due to certain misunderstanding, the marriage between the petitioner and the first respondent was dissolved in the year 2002 and a compromise was also arrived between the parties. A compromise memo was also executed on 13.06.2002. Pursuant to the compromise, a sum of Rs.4,00,000/- was paid by the petitioner as a one time maintenance to the first respondent by way of a Demand Draft on 15.06.2002. Ten years after this arrangement, the first respondent filed the application for maintenance. According to the learned Counsel, in



the interregnum period, the petitioner got married with another woman and he is also having children out of the marriage. Without considering all these aspects, trial Court as well as the revisional Court have erroneously ordered for maintenance in favour of the respondents and therefore, prayed for allowing this application.

4. Though notice was served on the respondents and name was also printed in the cause list, there is no representation on behalf of the respondents. Therefore, this Court by order dated 19.03.2021 appointed Advocate Mr.K.Veilmuthu [Enrol.No.2714/2010] as Legal Aid Counsel to defend the respondents in this case. But there is no representation on behalf of the Legal Aid Counsel also.

5. Heard the learned Counsel appearing for the petitioner and perused the available materials.

6. The petitioner is not denying the marriage with the first respondent and not denying the paternity of the minor children. However, the case of the petitioner is that there was a compromise arrived between the parties in the year 2002 and the divorce was pronounced by way of Talaq in the year 2002. As per the compromise, according to the petitioner, he paid a sum of Rs.4,00,000/-, as a one time maintenance to the first respondent and the children. After receiving the amount, the first respondent has not raised any objections and after ten long years, this maintenance application is filed.

7. Though the petitioner has taken a plea that there was a compromise memo and pursuant to the compromise, a sum of Rs.4,00,000/- was paid as a one time maintenance to the respondents, there is no material to substantiate the same. The very same plea has also been taken before the Courts below and the Courts have also discussed the same and rejected the said plea. In the absence of any materials to substantiate that there was any compromise memo between the parties and pursuant to the compromise, any amount has been paid, this Court is not inclined to entertain this application.

8. In fine, this criminal original petition stands dismissed. Pending miscellaneous petitions, if any, shall stand closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gk



To

1.The Additional District Judge,
Kumbakonam.

2.The Chief Judicial Magistrate,
Thanjavur at Kumbakonam.

Cr1.OP(MD)No.23471 of 2016
09.07.2021

CM(CO)
RD(16.07.2021) 3P 3C