



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DTED : 24.06.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

WEB COPY

Cr1.RC(MD)No.722 of 2016

S.Kuttalingam

... Petitioner

Vs.

1.Vanitha Shree

2.Minor.K.V.Tharani

3.Minor.Mutham Perumal

[Respondents 2 and 3 are minors rep. by

their mother, the first respondent] ... Respondents/Petitioners

[respondents 2 and 3 are amended as per order of this

Court made in Cr1.M.P.(MD)No.3665 of 2017 in

Cr1.R.C.(MD)No.722 of 2016, dated 25.04.2017]

PRAYER: Petition filed under Section 397 & 401 of the Criminal Procedure Code, to set aside the order passed in Cr1.M.P.No.872 of 2016 in M.C.No.31 of 2015 on the file of the Chief Judicial Magistrate, Nagercoil, dated 20.09.2016 by allowing this criminal revision petition.

For Petitioner : Mr.M.P.Senthil

For R1 : Mr.R.Manimaran

For R2 and R3 : No Appearance

ORDER

This criminal revision case has been filed by the petitioner to set aside the order, dated 20.09.2016 in Cr1.M.P.No.872 of 2016 in M.C.No.31 of 2015 passed by the learned Chief Judicial Magistrate, Nagercoil.

2. The revision petitioner herein is the husband of the first respondent and father of the second and third respondents. The brief fact of the case is that the marriage between the petitioner and the first respondent was solemnized at Devi Marriage Hall, Thoivalai. Due to the wedlock, they blessed with the second and third respondents. After marriage, the revision petitioner unnecessarily picked up quarrel with the first respondent. The respondent/wife was harassed and tortured by the petitioner/husband by demanding huge dowry. The first respondent/wife was driven out from the matrimonial home and



living with her parents. In the meantime, the first respondent/wife filed a suit in O.S.No.16 of 2011 before the Sub Court, Nagercoil against the respondent/husband seeking maintenance. The learned Sub Judge, allowed the suit on 12.11.2011 and ordered to direct the petitioner/husband to pay a sum of Rs.2,000/- each to the respondents from the date of petition till the cost of living in the society. But the revision petitioner had not failed to pay the maintenance. Therefore, the first respondent/wife herein has filed a petition in M.C.No.31 of 2015 seeking maintenance. In the maintenance petition, the order has been passed and granted a sum of Rs.5,000/-p.m to the first respondent and each Rs.5,000/-p.m to the second and third respondents. As against the said maintenance petition, the revision petitioner has filed a petition in Crl.MP No.872 of 2016 in M.C. No.31 of 2015, under Section 126(2) of Cr.P.C. seeking to set aside the exparte order and the afore said petition was dismissed by the Court below on 20.09.2016 and confirmed the maintenance amount and the revision petitioner was directed to pay a sum of Rs.5,000/-p.m., to the first respondent and Rs.5,000/-p.m., each, to the second and third respondents. Aggrieved over the said order, dated 20.09.2016, the revision petitioner/husband is before this Court.

3. The learned counsel appearing for the revision petitioner/husband submitted that, without considering the case in a proper manner ordered on 20.09.2016 to pay maintenance to a sum of Rs.15,000/-p.m., totally, to the respondents, from the date of petition is against law. He further submitted that the revision petitioner is employed as an ordinary staff in his company with nominal salary and hence, the petitioner is leading a simple and humble life without any savings and the petitioner had never drawn Rs.40,000/- as salary throughout his employment, thus the maintenance amount is too high. He further submitted that the Court below has failed to see that the petitioner has no other source of income. He further submitted that the first respondent/wife without serving proper summons to the revision petitioner had obtained exparte order against him on 04.09.2015. He further submitted that he has already paid a sum of Rs.1,12,500 to the credit of M.C.No.31 of 2015 before the learned Chief Judicial Magistrate, Nagercoil on 31.05.2017 and also filed a memo before this Court. Hence, he prays to allow this revision case.

4.The learned counsel appearing for the respondents submitted that they are living separately and the petitioner/husband failed to maintain the respondents. He further submitted that the 1st respondent is living with her parents along with her minor son and daughter. He further submitted that the respondents are in need of Rs.15,000/-per month towards maintenance amount and the petitioner/husband is capable of paying the maintenance amount to



the respondents. Hence, he prays to dismiss this revision case.

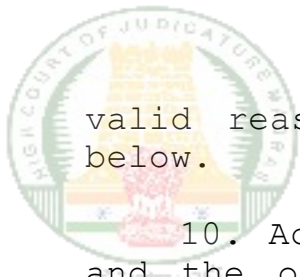
5. Heard the learned Counsel appearing for the petitioner/husband and the learned counsel appearing for the first respondent/wife and perused the material documents available on record.

6.The revision petitioner/husband has filed this Criminal revision case to set aside order, dated 20.09.2016 in Crl.M.P.No.872 of 2016 in M.C.No.31 of 2015 passed by the learned Chief Judicial Magistrate, Nagercoil.

7.The first respondent/wife and minor children had filed a petition in M.C. No.31 of 2015 before the learned Chief Judicial Magistrate, Nagercoil, under Section 125 of Cr.P.C., seeking maintenance of Rs.5,000/- p.m., to the 1st respondent/wife and Rs.5,000/- p.m., each to the respondents 2 and 3/minor son and daughter. After full-fledged trial, the Court below has allowed the maintenance petition and ordered a sum of Rs.5,000/-each, totally a sum of Rs.15,000/-p.m., as maintenance to the respondents. Against the said order dated, 04.09.2015, the petitioner/husband filed Crl.M.P.No.872 of 2016 in M.C.No.31 of 2015 before the learned Chief Judicial Magistrate, Nagercoil and the same was dismissed on 20.09.2016. Aggrieved over the same, the revision petitioner/husband is before this Court.

8.The relationship between the petitioner/husband and the respondents/wife and minor son and daughter was admitted by both parties and the separation was also admitted. It is a bounden duty of the husband to maintain his wife and children. Admittedly, the respondents 2 and 3/minor son and daughter are maintained by her mother. Eventhough, the 1st respondent/wife is working, it is a duty of the husband to maintain his wife and children. No document was filed to prove the income of both the parties. The maintenance amount Rs.5,000/-p.m., each to the respondents is reasonable amount. Eventhough, it is not sufficient, considering the status of revision petitioner it is reasonable.

9.It is seen from the records shows that notice was served to the revision petitioner/husband in Crl.M.P.No.872 of 2016 in M.C.No.31 of 2015. The served notice was also admitted by the petitioner/husband. Even though the petitioner has not appeared before the Court below in M.C.No.31 of 2015, the Court below has passed the order on merit, after going through the evidence of the first respondent/wife. The reason for filing of the criminal revision case is only for evading the proceedings before the Court. There is no valid ground to interfere with the findings of the learned Chief Judicial Magistrate, Nagercoil and the revision petitioner has not appeared properly. Hence, this Court has no



valid reason to interfere with the order passed by the Court below.

10. Accordingly, this Criminal Revision Case stands dismissed and the order passed by the learned Chief Judicial Magistrate, Nagercoil in Crl.M.P.No.872 of 2016 in M.C.No.31 of 2015 dated 20.09.2016, is hereby confirmed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

sjj

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

1. The Chief Judicial Magistrate, Nagercoil.

+2 CC to M/s.R.MANIMARAN, Advocate (SR-20056[F] dated 24/06/2021)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-20476[F] dated 28/06/2021)

**Order made in
Crl.RC(MD)No.722 of 2016**

24.06.2021

CN(06.07.2021) 4P 5C