



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 11.02.2021

DATE ON WHICH PRONOUNCED : 10.03.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVA

Crl.O.P.(MD)No.11565 of 2017

and

Crl.MP(MD)Nos.7936 & 7937 of 2017

WEB COPY

Priya ... Petitioner/Respondent
Vs.

Minor Vikash
represented by his alleged guardian and
paternal grandfather
Karuppanan ... Respondent/Petitioner

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the Maintenance Case in M.C.No.13 of 2016 on the file of the learned Judicial Magistrate, Thirumangalam and quash the same.

For Petitioner : Mr.J.Barathan
For Respondent : Mr.T.Amjadkhan

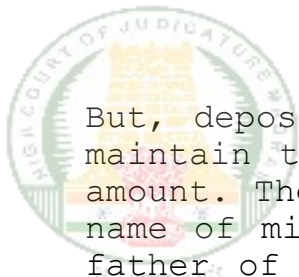
ORDER

This Criminal Original Petition has been to quash the Maintenance Case in M.C.No.13 of 2016, on the file of the learned Judicial Magistrate, Thirumangalam.

Facts in brief as stated by the respondent before the Trial Court:-

The respondent is represented by his grandfather namely, Karuppanan and he is residing with his grandfather and grandmother under their care and custody and he has completed first standard and undergoing second standard.

2. The respondent, who is the petitioner herein is the mother of the minor. Father is Anantharajan, who is the son of Karuppanan. Marriage took place on 08.03.2009. Out of their wed-lock, the respondent born on 09.07.2009. The petitioner herein joined the service in Punjab National Bank on 13.09.2011 and deserted the respondent herein and went away. In spite of repeated panchayat, there was no compromise between the husband and wife. So, they got divorce by mutual consent on 14.02.2014. During that proceedings, the father of the minor agreed that he would take care of him. But, the mother, who is the petitioner herein has not taken any steps to take care of the minor. The father of the minor is giving money routinely for maintaining the child. The grandfather is a retired Government servant. During the year 2015, the father of the minor performed second marriage. He did not take any care of the child.



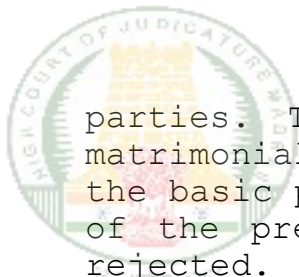
But, deposited a sum of Rs.1.60 lakhs and asked the grandfather to maintain the child out of the interest derived from the deposited amount. The grandfather has also took life insurance policy in the name of minor respondent and also paid regular premium amount. The father of the child is also paying a sum of Rs.6,000/- per month regularly and the petitioner herein did not visit the child after divorce. The grandfather of the minor respondent is not in a position to maintain the child from his meagre pension amount. The respondent/petitioner herein is bound to maintain the child. So, the grandfather gave a complaint before the Superintendent of police, Erode on 16.08.2012. But, the respondent/petitioner herein refused to take the minor and refused to pay any amount of maintenance. She is getting Rs.46,000/- per month as a salary. So, this petition is filed to direct the respondent to pay a sum of Rs.6,000/- per month towards maintenance of the minor child.

3. Seeking quashment of maintenance case, mother of the minor, who is the respondent before the trial, has filed this petition on the ground that even during the divorce proceedings, the father of the minor agreed to maintain the child and so, the petitioner herein is not responsible. Moreover, the father is also employed in the Chennai Port. The grandfather is not competent to file a petition for maintenance, when the father is alive. But, disobeying the decree, dated 14.02.2014 in H.M.O.P.No.118 of 2013, this petition has been filed. If the amount paid by the father of the child is not sufficient, the minor must take steps to get sufficient maintenance from the father. There is a fraudulent motive and *mala fide* intention behind the petition and this petition is filed only to destroy the fresh marital life of the petitioner. Purposely, the minor's father is not added as a party in the petition. Moreover, the petitioner herein, is living with her husband in Erode, but, whereas, the case was filed before the Magistrate Court, Thirumangalam, Madurai. So, the case must be quashed.

4. Heard both sides.

5. It is very unfortunate that because of the marital disharmony between the husband and wife, the minor child has been left in the lurch. But, according to the learned counsel for the petitioner, the wife even in the matrimonial proceedings, the father of the minor agreed to maintain the child and he undertook that he will not demand any maintenance from the petitioner herein. Such an undertaking, on the part of the father of the minor whether binding upon the minor is a larger question, which has to be decided during the enquiry proceedings. Considering the scope of Section 482 Cr.P.C, this Court cannot embark upon the question for decision. So, I leave the point to be decided by the Trial Court.

6. Prima facie the right of the child to seek maintenance from both of the parents or from either of the parents is always



parties. The duty to maintain the child is independent of the matrimonial dispute between the father and the mother. So, this is the basic principle. When we apply the basic principle to the facts of the present case, the petition for quashment is liable to be rejected.

WEB COPY

7. A fervent attempt has been made by the learned counsel for the petitioner that this Court must lift the veil of the guardianship of the minor and see the real motive behind the petition. But, the motive is a question of fact, which requires proper evidence. The Court cannot exercise the powers under Section 482 Cr.P.C to look into the real motive of the guardian. So, the request made by the learned counsel for the petitioner cannot be accepted.

8. His next contention is that she got married after divorce from her erstwhile husband and she is residing with her new family. Because of these proceedings, her new life is also in trouble. He would also contend that the father of the minor has also got married after divorce and he is an instrument behind this petition. But, as mentioned earlier, whatever may be the reason, the motive and hidden idea, behind this petition cannot be gone into by this Court, for the reasons stated above.

9. I am of the considered view that the matter requires a proper and detailed enquiry by the Trial Court, so, that not only interest of the petitioner, but, also the interest of the child can be protected. So, I am of the considered view that this is not a fit case to quash and it is not a clear case of abuse of process of Court and so, the petition is liable to be dismissed and accordingly stands dismissed.

10. Since the matter is of the year 2016 and that too filed for maintenance, the Trial Court is directed to complete the enquiry proceedings as expeditiously as possible, positively within four months from the date of receipt of copy of this order. The parties are directed to co-operate with the Trial Court for completion of the enquiry proceedings as stated supra. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss



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 Judicial Magistrate,
Thirumangalam.

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-10491[F] dated
11/03/2021)

Crl.O.P. (MD) No.11565 of 2017
and
Crl.MP (MD) Nos.7936 & 7937 of 2017
10.03.2021

na (CO)
TR (24.03.2021) 4P 3C