



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2021

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P (MD)No.16446 of 2017

and

Crl.M.P (MD)No.10911 of 2017

WEB COPY

Tajudeen

... petitioner

Vs.

1.L.Najira Kani

2.Aneesh Fathima

...respondents

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records and set aside the order passed in Crl.R.C.No.20 of 2016 on the file of the learned Additional District Judge (Fast Track Court), Kumbakonam, Thanjavur District dated 06.10.2017 confirming the order passed in M.C.No.17 of 2012 on the file of the learned Chief Judicial Magistrate, Thanjavur at Kumbakonam, dated 11.05.2016.

For Petitioner : Mr.A.Thiruvadikumar

For Respondents : Mr.R.Prakash

ORDER

This criminal original petition is filed as against the findings of the Courts below. The first respondent filed a petition before the learned Chief Judicial Magistrate, Thanjavur at Kumbakonam on her behalf and on behalf of her two children for maintenance as against this petitioner in M.C.No.17 of 2012 and the learned Chief Judicial Magistrate by order dated 17.05.2016 directed the petitioner to pay a sum of Rs.7,000/- as maintenance to the first respondent and Rs.4,000/-, to the second respondent and held that the son was not entitled for any maintenance. As against the order of maintenance passed by the learned Chief Judicial Magistrate, the petitioner preferred a revision petition before the Additional District Court, Thanjavur and the same was dismissed by order dated 01.06.2017 confirming the order passed by the learned Chief Judicial Magistrate. Aggrieved over the same, the petitioner has preferred this petition.

2.Mr.Thiruvadikumar, learned Counsel for the respondents submitted that due to certain misunderstandings between the petitioner and the first respondent, their marriage was dissolved by pronouncing talak on 05.12.2008 and after the divorce, he also paid a sum of Rs.4,00,000/- as one time settlement for maintenance of the respondents. Apart from the same, he also arranged for marriage of his daughter / the second respondent and arranged job for his son. He would further submit that the first respondent in her counter



affidavit admitted that Rs.4,00,000/- was paid by the petitioner and therefore, without considering and discussing the same, maintenance was ordered in favour the respondents.

3.The learned Counsel further submitted that the first respondent having received the one time settlement, is not entitled for any maintenance. After the divorce, the petitioner married another woman and he is having two children and he has to maintain them. Further earlier the petitioner was working in abroad and now he is working in a textile shop. The trial Court has not considered the same while fixing the quantum of maintenance. Under such circumstances, ordering Rs.7,000/- as maintenance per month is excessive.

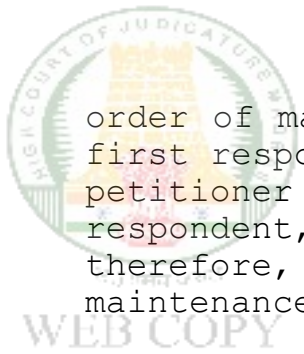
4.Mr.Prakash, learned Counsel for the respondents would submit that a sum of Rs.4,00,000/- which has been paid by the petitioner in the police station cannot be considered as alimony, preventing the respondents in anyway from claiming maintenance from the petitioner. The respondents have also denied that the petitioner has brought up the children and has arranged for marriage and arranged for a job as claimed by the petitioner. He would further submit that the petitioner has not paid the maintenance amount ordered by the Court so far.

5.This Court paid its anxious consideration to the rival submissions and also perused the materials placed on record.

6.Admittedly, the marriage between the petitioner and the respondent was dissolved by pronouncing talak on 05.12.2008. After the divorce the petitioners lodged a police complaint and during the enquiry before the respondent Police station, this petitioner has parted with a sum of Rs.3,00,000/- and another sum of Rs.1,00,000/- towards maintenance. This fact has also been admitted by the respondents in their counter affidavit. Further, the minor children have grown up and the second respondent has also given in marriage. The case of the petitioner is that he arranged marriage for her daughter and arranged job for his son in abroad, but he has returned India.

7.During the trial, the first respondent has taken a plea that the petitioner was working in abroad and was having reasonable income. That apart, he is having several other properties also. But she has not produced any documents before the Court to substantiate her stand. As pointed out by the learned Counsel for the petitioner Ex.P17 and ExP18 were filed before the trial Court that this petitioner had resigned his job in abroad and his passport was cancelled.

8.Under such circumstances considering the other facts that this petitioner's daughter and son have grown up, the son is also an ~~services member of his family~~ of his family, this Court is inclined to modify the



order of maintenance from Rs.7,000/- to Rs.5,000/- per month to the first respondent. Insofar as the second respondent is concerned, the petitioner is also said to have arranged for marriage for the second respondent, she is now married and living with her husband and therefore, the second respondent is entitled to get arrears of maintenance till her marriage.

9.In the result, this petition is partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dsk

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 Additional District Judge (Fast Track Court),
Kumbakonam,
Thanjavur District

2.The Chief Judicial Magistrate,
Thanjavur at Kumbakonam,

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-22768[F]
dated 15/07/2021)

Crl.O.P(MD)No.16446 of 2017
14.07.2021

GC(23.09.2021) 3P 5C