



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.03.2021

Pronounced on : 26.03.2021

CORAM

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

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CRL.R.C.(MD).156 of 2017

and

CRL.M.P.(MD)No.1555 of 2017

Gokul Srinivasan : Petitioner/Respondent

Vs.

1.Deepa Lakshmi

2.Minor.Cibi Kannan

3.Minor. Rishi Kannan

: Respondent/Petitioner/
Respondent

(Minors respondents 2 and 3 are represented by
their mother and natural guardian/1st respondent)

PRAYER : Criminal Revision has been filed under Section 397 r/w
401 of Cr.P.C, to call for the records in M.C.No.41 of 2016 on the
file of the Hon'ble Family Court, Tirunelveli, Tirunelveli
District and set aside the order dated 11.11.2016.

For Petitioner : No Appearance

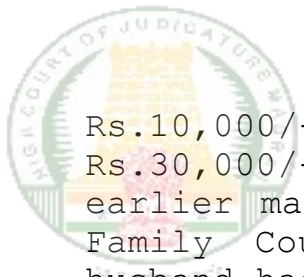
For Respondents : Mr.T.R.Jeyapalayam

ORDER

The Criminal Revision Case is directed against the order
passed in M.C.No.41 of 2016, dated 11.11.2016, on the file of the
Family Court, Tirunelveli.

2.It is not in dispute that the marriage between the revision
petitioner and the first respondent was solemnized on 19.10.1997,
that due to their wed-lock, the second respondent / son was
born to them on 18.01.1999 and the third respondent / son was born
on 26.03.2002, that subsequently there arose disputes and
misunderstanding between them and that they are living separately.

3.The first respondent for herself and for her two minor sons,
by invoking Section 125 Cr.P.C, has filed the case in M.C.No.41 of
2016, claiming maintenance at Rs.20,000/- each totally Rs.60,000/-
per month from the revision petitioner. The learned Judge of
Family Court has passed the impugned order, on 11.11.2016,
directing the revision petitioner to pay monthly maintenance at



Rs.10,000/- each of the respondents totally Rs.30,000/- per month from 18.04.2015, the date of filing of the earlier maintenance case in M.C.No.31 of 2015 on the file of the Family Court, Tirunelveli. Aggrieved by the said order, the husband has come forward with the present revision petition.

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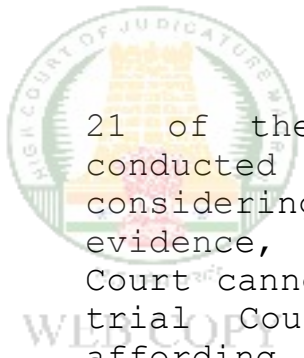
4.It is not in dispute that the respondents have previously filed a maintenance case in M.C.No.31 of 2015 on the file of the Family Court, Tirunelveli, that the revision petitioner has filed his counter statement disputing the claim of the respondents, that the respondents have adduced evidence by examining two witnesses and exhibiting eight documents and that the revision petitioner has examined himself and exhibited three documents.

5.The learned Judge of the Family Court, after hearing the arguments, has passed the order on 18.02.2016, by observing that there were contradictions in the main petition as the petitioner has been stated as respondent and the respondent has been stated as petitioner and hence, it was difficult to take a final decision, dismissed the case by granting liberty to file a fresh application.

6.It is also not in dispute that as per the order of the Family Court, dated 18.02.2016, passed in M.C.No.31 of 2015, the respondents have filed a fresh application under Section 125 Cr.P.C and the same was taken on file in M.C.No.41 of 2016, now under consideration.

7.When the above matter was taken up for hearing on 07.01.2021 and on subsequent four hearings, there was no representation for the revision petitioner and when the matter was taken up for hearing on 19.02.2021, the learned counsel for the respondents submitted that the letter sent to the respondent has been returned unserved and he was of the opinion that the matter could have been settled and that thereafter, directed the matter to be posted under the caption 'for dismissal'. Since the revision petition has been filed under Section 397 r/w 401 Cr.P.C, this Court is not inclined to dismiss the revision for default. Since the revision is pending from 2017 onwards, this Court decided to hear the other side and to pass orders on merits.

8.In the revision memorandum, the revision petitioner has raised specific grounds that the order of the trial Court is exfacie illegal, arbitrary and against the settled principles of law, as the trial Court has committed a grave illegality in substituting the evidence recorded in the earlier case, which had been disposed off, that the procedure followed by the trial Court is erroneous and violative of fair trial guaranteed under Article



21 of the Constitution, that the trial Court ought to have conducted a fresh trial by examining the witnesses rather than considering the evidence recorded in a disposed off case, that the evidence, which has been taken into consideration by the trial Court cannot be construed as evidence in the eye of law, that the trial Court had hurriedly disposed the above case without affording any opportunity to the revision petitioner to take part in the trial, that the trial Court had passed an ex-parte order without providing sufficient opportunity, despite the fact that the revision petitioner had contested the proceedings in M.C.No.31 of 2015 on the file of the Family Court, Tirunelveli and that the impugned order, which is illegal, is liable to be set aside.

9. Whether the impugned order passed on 11.11.2016, in M.C.No.41 of 2016 on the file of the Family Court, Tirunelveli, Tirunelveli District, is liable to be set aside? is the point for consideration.

10.It is evident from the records that as per the order passed by the Family Court, in M.C.No.31 of 2015, dated 18.02.2016, the respondents have filed a fresh petition under Section 125 Cr.P.C on 15.09.2016 and the same was taken on file on 21.09.2016, that the learned Judge after taking the case on file, has ordered for issuance of notice to the respondent therein and adjourned the case on 21.10.2016, that on 21.10.2016 the petitioner herein / respondent has appeared in person and the Court adjourned the matter to 02.11.2016 for appearance of the respondents / petitioners and for clarification, that on 02.11.2016 both parties were absent and as there was no representation, the case was adjourned to 10.11.2016 for advancing arguments, if any, that on 10.11.2016 the Court by recording the presence of the respondents / petitioners and the absence of the petitioner / respondent therein and non representation for the petitioner and after hearing the arguments of the respondent side, adjourned to 11.11.2016 'for orders' on merits and that on 11.11.2016 the impugned order has been passed.

11. Though the learned Judge in his order has observed that vakalat for the revision petitioner/respondent has been filed, it is not known as the trial Court was referring to the vakalat filed in the earlier M.C.No.31 of 2015, or in the subsequent case in M.C.No.41 of 2016. As already pointed out, in the earlier case in M.C.No.31 of 2015, the trial was completed and the evidence adduced by both the sides have been recorded. No doubt, the respondents in pursuance of the liberty granted by the Family Court, have filed the new case in M.C.No.41 of 2016. No doubt, in the fresh application, the respondents have stated that oral and documentary evidence recorded and marked before the Family Court in M.C.No.31 of 2015 may be considered in taking a final decision.



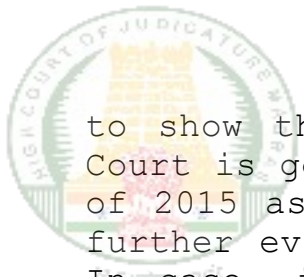
12. It is pertinent to mention that after appearance of the petitioner, the trial Court has not directed him to file the counter statement nor directed him to file a memo to treat the counter statement filed in M.C.No.31 of 2015 as counter to the case in M.C.No.41 of 2016. The learned Judge, except the new petition filed under Section 125 Cr.P.C, has taken by himself the counter statement of the petitioner filed in M.C.No.31 of 2015 and all the evidences recorded in M.C.No.31 of 2015 to the present case and on that basis, discussed the issues and decided the same.

13. Admittedly, both parties have not filed any memo or petition, requesting the Court to treat the evidence recorded in M.C.No.31 of 2015 as evidence to the present case. More over, the trial Court has also not directed the parties to file a memo or to make endorsement in the Court records to treat the evidence recorded in M.C.No.31 of 2015 as evidence to the case on hand.

14. Further, the trial Court has not afforded any opportunity or chance for the parties to adduce evidence or further evidence, if any. No doubt, the trial Judge in his order, by observing that since the present petition was filed on the same cause of action and as there were no contradictions, it is not necessary to examine the witnesses again and to allow the parties to cross examine the witnesses again and that in case, if the parties are permitted to cross examine again, there is every possibility of giving different answer or reply by the wife and the husband will be benefited by that contradictions.

15. I am at loss to understand as to how the trial Court, without getting the consent of both the parties to treat the evidence recorded in the earlier case as evidence to the present case, has come to the conclusion that recording of evidence again is not necessary. It is also not known as to how the learned Judge has made such an observation that in case, if the parties are permitted to adduce evidence and for cross examination, there is possibility of the wife giving answers different to that of the answers given in the earlier cross examination and that the husband would take advantage of the same and would be benefitted by it.

16. As already pointed out, after receipt of Court notice, the respondent has appeared before the Court on the first hearing date and thereafter, neither the respondent nor his counsel has appeared. But, the trial Court without affording any opportunity to the respondent to adduce their side evidence or to advance their arguments has chosen to reserve the case for orders, on the third hearing of the case itself. More over, there is no material



to show that the trial Court had informed the parties that the Court is going to treat the evidence recorded earlier in M.C.No.31 of 2015 as evidence to the present case and no fresh evidence or further evidence are permitted to be adduced by both the parties. In case, if the trial Court, after getting the consent of both parties for treating the evidence recorded in the earlier case to the case on hand and after recording that both the parties are not having any further evidence to be adduced, then the impugned order of the trial Court cannot said to be illegal, but in the present case, the procedure adopted by the trial Court is not proper and is not in accordance with law. Considering the above, this Court has no hesitation to hold that the impugned order is not good in law and the same is liable to be set aside and that the case has to be remitted back to the trial Court for disposal in accordance with law.

17. In the result, this Criminal Revision case is allowed and the impugned order passed in M.C.No.41 of 2016, dated 11.11.2016 on the file of the Family Court, Tirunelveli, Tirunelveli District, is set aside and the case is remitted back to the Family Court, Tirunelveli.

18.The learned trial Judge of Family Court, Tirunelveli, is directed to issue notice to both the parties and invite their consent or objections for treating the evidence recorded in M.C.No.31 of 2015 as evidence to the case in M.C.No.41 of 2016 and afford opportunity to both the parties to adduce evidence, if any and then dispose of the case in accordance with law. Since the case is pending from 2015, the learned Judge is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order and both the parties are directed to extend their fullest co-operation for disposing the case within the time stipulated. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

das



To

1. The Family Court, Tirunelveli,
Tirunelveli District.
2. The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-14215[F] dated
29/03/2021)

order made in
CRL.R.C. (MD) .156 of 2017
26.03.2021

VB (04/05/2021) 6P / 5C