



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.01.2021

Pronounced on : 09.02.2021

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.RC(MD).No. 261 of 2017 and
CrI.M.P(MD).No. 2329 of 2017

Dhamotharan : Petitioner / respondents

Vs.

1.Gowsalya

2.Minor. Dhanya

3.Minor. Nantha

: Respondents / petitioners

(2nd and 3rd respondents represented through
their Natural Guardian their mother / 1st respondent)

PRAYER:- Criminal Revision Case filed under Section 397 and 401 Cr.P.C., against the order of maintenance made in M.C.No.19 of 2016, dated 13.02.2017, on the file of the Family Court, Virudhunagar District.

For petitioner : Mr.H. Arumugam

For respondents : Mr. V. Chandrasekar
(R2 and R3 Minor rep by R1)

ORDER

This Criminal Revision is directed against the order passed in M.C.No. 19 of 2016, dated 13.02.2017 on the file of the Family Court, Virudhunagar District at Srivilliputur.

2. Admittedly, the revision petitioner is the husband of the first respondent and father of the respondents 2 and 3. The facts not in dispute are that the marriage between the petitioner and the first respondent was solemnized on 22.02.2007 at Rajapalayam as per the Hindu Rites and Customs and that due to their wedlock, the first respondent gave birth to the second petitioner daughter on 27.12.2007 and third petitioner son on 22.12.2011 and that the petitioner has been working as a Constable in CRPF. It is not in dispute that due to misunderstanding between the petitioner and the first respondent they were living



separately from the year 2016. It is also not in dispute that the first respondent has previously filed a petition in M.C.No.5 of 2016 claiming maintenance for herself and for her minor children on the file the Family Court, Srivilliputur and subsequently, the said petition was not pressed. It is also not in dispute that the petitioner has filed a divorce petition in HMOP.No. 48 of 2016 on the file of the Sub Court, Srivilliputur, on the ground of cruelty and that during the pendency of the said matrimonial proceedings, the first respondent has filed the above case in M.C.No. 19 of 2016 claiming maintenance for herself and for her minor children, before the Family Court, Srivilliputur. After enquiry, the learned Judge of the Family Court, has passed the impugned order dated 13.02.2017 directing the petitioner to pay a sum of Rs.8,000/- per month to the first respondent and Rs.5,000/- per month each to the respondents 2 and 3 from the date of petition. Aggrieved by the said order, the present revision came to be filed.

3. As usual in the matrimonial proceedings the revision petitioner / husband and the first respondent / wife are making allegations and counter allegations against each other.

4. The learned counsel appearing for the petitioner would contend that though the petitioner was always ready and willing to live with the first respondent, the first respondent alone has refused to live with the petitioner and deserted him and that therefore, she is not entitled to claim maintenance.

5. It is pertinent to mention that the revision petitioner has not at all challenged the findings of the Family Court, that the first respondent was entitled to get the maintenance from the revision petitioner and that he has only disputed the quantum of maintenance fixed by the Family Court. Whatever it is, it is pertinent to mention that the petitioner alone has filed the divorce petition alleging that the first respondent had treated him with cruelty. As rightly pointed out by the learned counsel for the respondents, after filing of the earlier maintenance case in M.C.No.5 of 2016, the petitioner has preferred the complaint before the Police and that since both of them have entered into compromise and expressed their willingness to live together before the police, the first respondent was constrained to withdraw her maintenance case. The petitioner in his cross examination would admit that after withdrawal of the maintenance case, they were living together and that he filed a divorce petition subsequently on 23.03.2016 within a period of six weeks from the date of withdrawal of the maintenance case.

6. Moreover, the petitioner in his cross examination, would admit categorically that he is not willing to live with the



first respondent anymore. As rightly observed by the learned Judge of the Family Court, the petitioner has failed to prove that he was deserted by the first respondent and that he has not shown that he had sent any notice nor taken any proceedings for restitution of Conjugal Rights. Considering the above, the finding of the trial Court that the petitioner has refused or neglected to maintain his wife and children cannot be found fault with.

7. As already pointed out, the Family Court has granted maintenance amount at Rs.8,000/- per month to the 1st respondent and Rs.5,000/- per month each to the respondents 2 and 3 making total of Rs.18,000/- per month.

8. No doubt, the first respondent has produced the pay slip of the petitioner for the month of March 2016 as Ex.P1 and whereunder it is evident that the petitioner was getting Rs.9,800/- as basic pay; Grade pay at Rs.2,400/-; Rs.14,518/- towards Dearness allowance, making Gross pay at Rs.33,754/- and net pay at Rs.30,708/-.

9. The learned counsel appearing for the petitioner would strenuously contend that the Family Court, erred in arriving the conclusion that the petitioner's salary as per the 7th Pay Commission will be around Rs.82,500/- and that the said order is ex-facie illegal and unsustainable. He would further contend that the trial Court has fixed the maintenance amount on its own assumption and presumption.

10. No doubt, as rightly pointed by the learned counsel for the petitioner, the Family Court, after recording the admission of the petitioner that he was getting Rs.33,000/-, has observed that as per the recommendations of the 7th pay commission, the petitioner would get Rs.82,500/-. The Trial Court has further observed that the 7th pay commission recommendations were already implemented to the Central Government staff and the contention of the petitioner that the 7th pay commission benefits were not yet given cannot be accepted. The petitioner has produced the copies of pay slips for the months of June 2016 to February 2017 and according to him, even after implementation of the 7th pay commission, he was only getting Gross Pay of Rs.36,416/- and net pay at Rs.28,168/-.

11. According to the petitioner, after implementation of the pay recommendations, Dearness Allowance was merged with the basic pay and hence, no Dearness allowance would be paid. As rightly contended by the learned counsel for the petitioner, this Court is at loss to understand as to how the Family Court had arrived at Rs.82,500/- as the Gross pay of the petitioner after



implementation of the pay commission recommendation. As rightly contended by the learned counsel for the petitioner, there is absolutely no material to show that the petitioner would get Gross Pay at Rs.82,500/- and after deduction Net pay at Rs.72,000/-.

12. No doubt, the petitioner is also duty bound to maintain to his parents. According to the petitioner, his mother is suffering from heart problem and he has to incur medical expenditure every month. He would admit in his evidence that his father is getting pension. Since there is no evidence to show that the petitioner is getting Rs.82,500/- or Rs.72,000/- as stated by the trial Court, fixing of the monthly maintenance at Rs.18,000/- for three respondents is definitely on the higher side.

13. Considering the entire facts and circumstances of the case, status of the parties and the present economic scenario, this Court is of the view that the maintenance of Rs.8,000/- awarded to the first respondent is to be reduced to Rs.5,000/- per month from the date of revision. The maintenance amount awarded to the minor respondents 2 and 3 remains unaltered. But at the same time, the first respondent is at liberty to approach the Family Court, for enhancement of maintenance, if it is warranted.

14. Considering the above, this Court decides that the respondents 1 to 3 are entitled to get monthly maintenance at Rs.5,000/- per month each from the petitioner and the petitioner is directed to pay the maintenance at Rs.5,000/- per month to the 1st respondent from the date of revision. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

15. With the above modification, this Criminal Revision Case is disposed of. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar (CS)



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 Judge, Family Court,
Virudhunagar District.

Copy to
The Section Officer, Criminal Section-2 copies
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.V.CHANDRA SEKAR, Advocate (SR-1939[F] dated 25/01/2021)

+1 CC to Mr.H.ARUMUGAM, Advocate (SR-4158[F] dated 10/02/2021)

order made in
CRL.RC(MD).No. 261 of 2017 and
Cr1.M.P(MD).No. 2329 of 2017
09.02.2021

KM (19.02.2021) 5P 6C