



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 28.04.2021
PRONOUNCED ON : 30.07.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.R.C.(MD) No.284 of 2017

and

CrI.M.P.(MD)No.2635 and 4921 of 2021

M.Subramanian : Petitioner/Respondent

Vs.

1.Revathi

2.Minor Mari Vaishnavi : Respondents /Petitioners
(Minor represented by her mother
and natural guardian 1st respondent)

PRAYER: Criminal Revision Petition filed under Section 397 Cr.P.C.
r/w. Section 401 of Criminal Procedure Code, to call for the records
in M.C.No.28 of 2016 on the file of the Family Court, Tirunelveli,
dated 02.09.2016 and to set aside the same.

For Petitioner : Mr.D.Venkatesh
For Respondents : Mr.Fazil Kirumani
Legal Aid Counsel

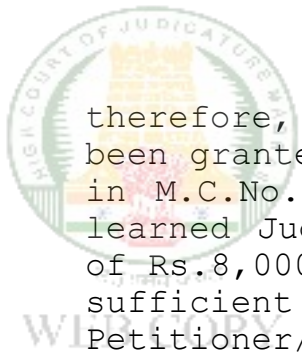
ORDER

This Criminal Revision Petition is filed as against the order
made in M.C.No.28 of 2016 on the file of the Family Court,
Tirunelveli, dated 02.09.2016.

2.Heard Mr.D.Dinesh, learned Counsel for the Revision
Petitioner and Mr.Fazil Kirmani, learned Counsel for the
respondents.

3.The ground of attack by the learned Counsel for the Revision
Petitioner is that the learned Judge had failed to consider the fact
that the Revision Petitioner had obtained divorce in H.M.O.P.No.141
of 2014, dated 02.03.2016, against the wife.

4.The memorandum of grounds of revision states that the learned
Judge had failed to consider the fact that in H.M.O.P.No.140 of
2015, the Revision Petitioner had obtained the decree of divorce
against the wife on the ground that she was not willing to cohabit
with the Revision Petitioner and on that ground, the divorce had
been granted. This fact was ignored by the learned Trial Judge in
M.C.No.28 of 2016 on the file of the Family Court at Tirunelveli.
The contention of the learned Counsel for the Revision Petitioner is
that the wife left the matrimonial home on her own volition and



therefore, under the grounds for cruelty and desertion, divorce had been granted. In such circumstances, the petition filed by the wife in M.C.No.28 of 2016 ought to have been dismissed. Instead, the learned Judge had allowed the petition and granted the maintenance of Rs.8,000/- per month. Without assigning any reasoning and without sufficient proof regarding the income of the Revision Petitioner/husband, the learned Judge had ordered Rs.5,000/- per month for the wife and Rs.3,000/- for the child, which is unreasonable. Therefore, the Revision Petitioner/husband had filed this revision to set aside the order passed in M.C.No.28 of 2016.

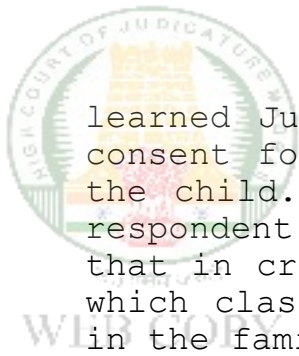
Point for consideration:

5.Whether the order of the learned Judge, Family Court, Tirunelveli, in M.C.No.28 of 2006, dated 02.09.2016, is to be set aside?

6.On perusal of the order of the learned Judge in M.C.No.28 of 2016, dated 02.03.2016, nothing is found unreasonable or perverse. The learned Judge had discussed about the Revision Petitioner/husband earning his livelihood through auto rikshaw as an auto rikshaw driver and he had relied on the evidence of the respondent in maintenance case and he had admitted that he is earning Rs.60/- per trip, considering the fact that he is driving auto rikshaw within the limits of Palayamkottai Town. Also, the learned Judge had relied on the admission made by the Revision Petitioner herein in the divorce petition. Apart from the auto rikshaw business, he had income from the agricultural lands. He used to help his parents by involving in agricultural activities, thereby, helping his parents in their livelihood.

7.When that be the case, an auto rikshaw driver, who has regular client by pick up and drop the school children at school hours and general income from pick up and drop the general public. The learned Judge had come to the conclusion that Rs.5,000/- per month for the wife and Rs.3,000/- for the child is a reasonable amount based on presumption from the income available from agriculture and independent income of the Revision Petitioner/husband by driving auto rikshaw in the Palayamkottai limits.

8.The fact of divorce had been discussed by the learned Judge stating that in the course of the cross examination of the respondent before the learned Judge, Family Court, the petitioner herein/husband had admitted that he is duty bound to maintain his daughter/the second respondent herein and he is morally liable to maintain his wife till she contracts a second marriage. Also, he had admitted in his cross examination that if she had demanded money for maintenance, he would have paid her. That portion of the admission in cross examination of the Revision Petitioner was used by the learned Judge to decide the maintenance case in favour of the Revision Petitioner, who is the respondent before the



learned Judge, Family Court, Tirunelveli, had indirectly given his consent for a reasonable amount to be paid to both the mother and the child. Regarding the conduct of the Revision Petitioner as respondent before the Family Court, the learned Judge had observed that in cross examination, he had answered that he does not know in which class, his daughter studies. That shows, he is not involved in the family affairs as a responsible husband and father.

9.As per the Rules laid down by the Honourable Supreme Court, it was held that even a divorced wife can seek maintenance from her husband and the same is maintained before the Family Court. While so, the claim that the petitioner does not have sufficient income cannot at all be a ground to deny the wife, who was divorced by the husband/petitioner in H.M.O.P.No.124 of 2014. Both the H.M.O.P., and the Maintenance Case were disposed by the same Judge, but on different dates.

10.When there is evidence that the petitioner's avocation has sufficient means to maintain his wife and child, the reasons given by the learned Judge, Family Court imposing the husband to pay the maintenance is found justifiable. There is no ground to believe that the finding of the learned Family Judge, is perverse. The Revision Court cannot go into the question of evidence. It can interfere only if there is violation of established principles; only if the finding is erroneous; only if the findings of the Court is perverse. Therefore, as many decisions of Honourable Supreme Court reiterates that the wife is to be maintained. The maintenance amount of Rs.8,000/- per month is not extraordinary amount considering the present circumstances.

Therefore, the point for consideration in this case is answered in favour of the wife/first respondent and against the husband/petitioner.

In the result, this petition is dismissed, as it is against the laws laid down by the Honourable Supreme Court regarding the maintenance. The order passed by the learned learned Judge, Family Court, Tirunelveli, in M.C.No.28 of 2006, dated 02.09.2016, is confirmed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

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Sub Assistant Registrar(CS)



To
The Judge,
Family Court, Tirunelveli.

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