



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.03.2021

Pronounced on : 09.03.2021

WEB COPY

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.300 of 2017

K.Manickavel

... Petitioner/Respondent

Vs.

1.Jemima Persis

2.Minor Evangeline

... Respondents/Petitioners

(Minor represented by her mother and natural guardian/first respondent herein)

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records pertaining to the judgment in M.C.No.152 of 2014 on the file of the Family Court, Tiruchirappalli, dated 01.12.2016 and set aside the same.

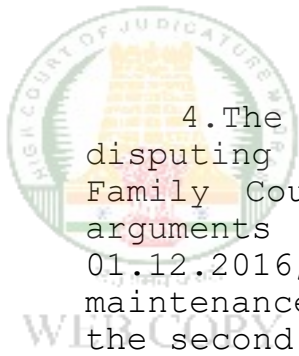
For Petitioner : Mr.K.M.Vijayakumar
For Respondents : Mr.S.Vinayagam

ORDER

The Criminal Revision Case is directed against the order passed in M.C.No.152 of 2014, dated 01.12.2016, on the file of the Family Court, Tiruchirappalli.

2.It is not in dispute that the marriage between the revision petitioner and the first respondent was solemnized on 06.03.1991, at BHEL Marriage Hall, Thiruvarambur, Trichirappali, as per the Christian rites and custom, that due to their wed-lock, a son, namely, Nithiyanandam was born on 05.12.1991 and a daughter by name, Evangeline /the second respondent was born on 07.10.1997, that subsequently there arose misunderstanding between them and that they are living separately.

3.The first respondent for herself and for her minor daughter, by invoking Section 125 of Cr.P.C has filed the case in M.C.No.152 of 2014, claiming monthly maintenance at Rs.10,000/- for her and Rs.10,000/- for her minor daughter, totalling at Rs.20,000/-.



4.The revision petitioner has filed the counter statement, disputing the liability to pay maintenance. The learned Judge, Family Court, upon considering the evidence and on hearing the arguments of both sides, has passed the impugned order on 01.12.2016, directing the revision petitioner to pay monthly maintenance at Rs.7,000/- to the first respondent ; Rs.8,000/- to the second respondent from the date of petition and further directed the revision petitioner to bear the educational expenses of the second respondent. Aggrieved by the said order, the husband has come forward with the present petition.

5. Whether the impugned order passed in M.C.No.152 of 2014 on the file of the Family Court, Tiruchirappalli, is liable to be set aside? is the point for consideration.

6.The revision petitioner/husband and the first respondent/wife, as usual in the matrimonial proceedings, have raised so many allegations and counter allegations against each other. It is not in dispute that the revision petitioner has filed a petition in IDOP.No.146 of 2008 before the District Court, Erode, against the first respondent, claiming divorce and that after enquiry, the said petition was ordered to be dismissed vide order dated 20.01.2011. It is also not in dispute that the revision petitioner, aggrieved by the dismissal of divorce petition, has preferred an appeal in CMA.No.1682 of 2011 on the file of this Court, and the same is pending. It is also not in dispute that the respondents by alleging that the revision petitioner has failed to pay the maintenance as ordered in M.C.No.152 of 2014, has filed a petition under Section 128 of Cr.P.c and the same is also pending on the file of the Family Court, Trichy.

7.The learned counsel for the petitioner would contend that the first respondent is living in adultery and she has caused cruelty and also deserted the revision petitioner, that the trial Court has failed to consider the above aspects, that the trial Court has also failed to consider that the first respondent has not proved the factum that she is unable to maintain herself and her children and that the trial Court has also failed to take into account that the petitioner's son Nithiyanadham, who had attained majority is the earning member of their family and the first respondent has sufficient means through her son also.

8.No doubt, the revision petitioner has taken a stand that since the first respondent is living in adultery with one Gnadurai and that he is disputing the paternity of the second respondent, he is not liable to pay any maintenance to the respondents. As already pointed out, the divorce petition filed by the revision petitioner was already dismissed by the District Court, Erode and now the appeal is pending before this Court.



9.The learned Judge of Family Court, upon considering the evidence, has given a specific finding that the revision petitioner has miserably failed to prove the alleged illicit intimacy of the first respondent with one Gnadurai. The trial Court has rightly observed that the revision petitioner in the divorce proceedings in IDOP No.146 of 2008 has specifically admitted that due to their wed-lock, their son Nithiyanandam was born on 05.12.1991 and the daughter by name, Evangeline was born on 07.10.1997 and that the revision petitioner has not attempted to prove that the second respondent was not born to him.

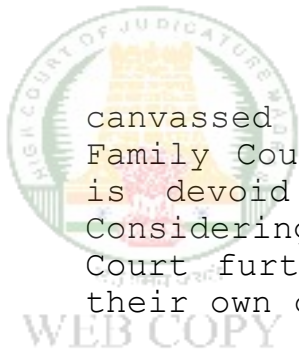
10.As rightly contended by the respondents side, since the revision petitioner has utterly failed to prove the allegations of adultery and the other allegation that the second respondent was not born to him, as rightly observed by the trial Court, the revision petitioner is liable to pay maintenance to the respondents.

11.At the time of arguments, it is represented that the second respondent, during the pendency of the revision, had attained majority. Though the revision petitioner has alleged that the first respondent has sufficient means, he has not produced any evidence to substantiate the same. Simply because, their son had attained majority, it cannot be said that the first respondent is getting income through her son. Moreover, as rightly contended by the learned counsel for the respondents, the revision petitioner has not produced any material to show that his son is employed and is getting income.

12.Now coming to the quantum of maintenance amount, the trial Court has directed the revision petitioner to pay Rs.7,000/- to the first respondent and Rs.8,000/- to the second respondent, apart from paying educational expenses of the second respondent. It is not in dispute that the revision petitioner is working as a physiotherapist in Government Hospital. No doubt, he has disputed the contention of the respondents that he is owning a clinic at Trichy and is getting additional income.

13.No doubt, the revision petitioner is duty bound to maintain his mother, but even according to him, his mother is getting father's pension. Admittedly, the revision petitioner has not produced the salary certificate or pay slip to show that he is getting only lesser income.

14.Considering the fact that the revision petitioner is working as physiotherapist in Government Hospital and also considering the facts and circumstances and also the status of the parties and the present economic scenario, the fixation of monthly maintenance at Rs.7,000/- to the first respondent and Rs.8,000/- for the second respondent by the learned trial Judge cannot be found fault with and this Court is in entire agreement with the determination and



canvassed any other reason or ground to impugn the order of the Family Court. Hence, this Court decides that the revision petition is devoid of merits and the same is liable to be dismissed. 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 and the above point is answered accordingly.

15. In the result, this Criminal Revision case is dismissed. Parties are directed to bear their own costs.

Sd/-

Assistant Registrar

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/ /2021

Sub Assistant Registrar(CS)

DAS

To

1. The Family Court, Tiruchirappalli.

2. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2-copies)

+1 CC to Mr.M.S.JEYAKARTHIK, Advocate (SR-9911[F] dated 10/03/2021)

Order made in
CRL.R.C. (MD) .No.300 of 2017
09.03.2021

SSS(CO)

SRS (19/03/2021) 4P : 5C