



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.03.2021

Pronounced on : 19.03.2021

WEB COPY

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.RC(MD).No. 41 of 2017 and
CrI.M.P(MD).No.397 of 2017

N. Mariyappan : Petitioner / Respondent

Vs.

Ariyanatciyar : Respondent / petitioner

PRAYER:- Criminal Revision Case filed under Section 397(1) r/w. 401 Cr.P.C., against the order dated 05.12.2016 passed in M.C.No.02 of 2013 on the file of the learned Chief Judicial Magistrate, Thoothukudi, Thoothukudi District directing the petitioner herein to pay a sum of Rs.3,250/- per month as maintenance to the respondent herein from the date of filing of the petition.

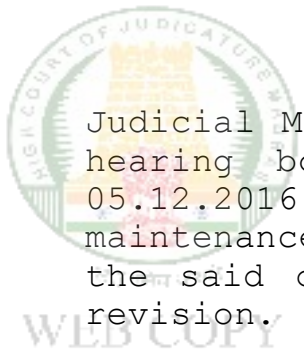
For petitioner : Mr. Ilayaraja
for Mr. Thiruvadikumar
For respondents : Mr. C. Mayilvahana rajan
for Mr. P. Banu Prasath

ORDER

This Criminal Revision is directed against the order passed in M.C.No. 2 of 2013, dated 05.12.2016 on the file of the the Court of Chief Judicial Magistrate, Tuticorin.

2. It is not in dispute that the marriage between the revision petitioner and the respondent was solemnized on 27.01.2006 at Thirugnana Sambantha Moorthi Madam Saiva Vellalar Thirumana Mandapam, North Car Street, Tuticorin, that due to the wedlock a male child was born to them on 28.04.2008 and that subsequently, there arose misunderstanding between them and they are living separately.

3. The respondent for herself and for her minor child, by invoking Section 125 Cr.P.C., has filed the case in M.C.No.2 of 2013 claiming maintenance at Rs.10,000/- per month. The revision petitioner has disputed the liability and quantum of the maintenance amount claimed by the respondent. The learned Chief



Judicial Magistrate, upon considering the evidence adduced and on hearing both the sides, has passed the impugned order on 05.12.2016 directing the revision petitioner to pay monthly maintenance at Rs.3,250/- from the date of petition. Aggrieved by the said order, the husband has come forward with the present revision.

4. Whether the impugned order passed in M.C.No.2 of 2013, dated 05.12.2016 on the file of the learned Chief Judicial Magistrate, Tuticorin, is liable to be set aside? is the point for consideration.

5. It is not in dispute that the revision petitioner has filed a petition in HMOP.No.207 of 2010 claiming divorce on the file of the Sub Court, Tuticorin, that the respondent has filed a petition in HMOP.No.223 of 2012 claiming the relief of restitution of conjugal rights on the file of the Sub Court, Tuticorin and that the above said two cases are pending. It is also not in dispute that the respondent, by invoking the provisions of Domestic Violence Act, has filed a case in M.C.No.25 of 2011 claiming various reliefs under Sections 18, 19, 20 and 22 of the Protection of women From Domestic Violence Act, 2005 against the revision petitioner and his family members, that the respondents therein have filed their counter statement disputing the liability, that during the pendency of the above case, they have entered into a compromise and executed a compromise agreement, that thereafter the respondent has filed an application under Section 257 Cr.P.C., seeking permission to withdraw the case in view of the execution of the compromise agreement and that the learned Judicial Magistrate No.I, Tuticorin has passed an order dated 15.09.2012 disposing the said case as withdrawn. It is also not in dispute that as per the compromise agreement, the learned Judicial Magistrate No.I, Tuticorin in his order dated 15.09.2012 passed in M.C.No.25 of 2011, has directed the revision petitioner to pay Rs.1,500/- to the respondent towards monthly maintenance.

6. The learned counsel appearing for the revision petitioner would contend that both the parties have entered into compromise during the pendency of the case in M.C.No.25 of 2011, that as per the order passed in M.C.No.25 of 2011, the revision petitioner has been depositing Rs.1,500/- in the Bank account of the respondent continuously and that since the respondent in the compromise agreement had agreed not to indulge in further litigation, the present complaint under Section 125 Cr.P.C., is legally unsustainable.

7. It is pertinent to mention that in the compromise agreement the respondent had agreed to withdraw the case in M.C.No.25 of 2011 pending against the revision petitioner and his



family members and that both parties have agreed to adjudicate their other disputes including the divorce case before the competent Court. Moreover, in the order passed in M.C.No.25 of 2011 dated 15.09.2012, apart from directing the revision petitioner to pay Rs.1,500/- to the respondent towards monthly maintenance, the Magistrate has further directed the revision petitioner and his family members not to indulge in domestic violence against the respondent as agreed in settlement entered into between the parties. Hence, the present contention of the revision petitioner that the respondent had agreed not to indulge in further litigation is absolutely devoid of substance and the same is liable for rejection.

8. The learned counsel appearing for the revision petitioner would further contend that the respondent had initiated simultaneous proceedings claiming maintenance on the same facts, that the facts pertaining to the complaint under Section 12 of Protection of women From Domestic Violence Act and the petition filed under Section 125 Cr.P.C., are one and the same and that since the petitioner had been regularly remitting the maintenance as directed in M.C.No.25 of 2011 on the file of the Court of Judicial Magistrate No.I, Tuticorin, the present case filed under Section 125 Cr.P.C., legally unsustainable. I find absolutely no merit in this contention. Section 20(1)(d) of the Protection of women From Domestic Violence Act, 2005 contemplates that the Court which is considering the application under Section 12 of the Protection of women From Domestic Violence Act, 2005 would take into account an order of maintenance passed under Section 125 Cr.P.C., or in other law, for the time being in force.

9. A cursory perusal of Section 20 of the Protection of women From Domestic Violence Act, 2005 would reveal that the proceedings under Section 12 of the Protection of women From Domestic Violence Act, 2005 and the proceeding under Section 125 Cr.P.C., are entirely different and are independent of each other, but there is an overlap. As already pointed out, the Court, at the time of consideration of the application for grant of maintenance under Section 12 of the Protection of women From Domestic Violence Act, 2005, the maintenance fixed under Section 125 Cr.P.C., shall be taken into account. Simply because an order for maintenance was granted under Section 12 of the Protection of women From Domestic Violence Act, 2005 it cannot be said that proceeding under Section 125 Cr.P.C., will not lie. Hence, the contention of the revision petitioner that the present compliant under Section 125 Cr.P.C., is not maintainable in view of the order passed in M.C.No.25 of 2011 is devoid of merit and is liable to be rejected.

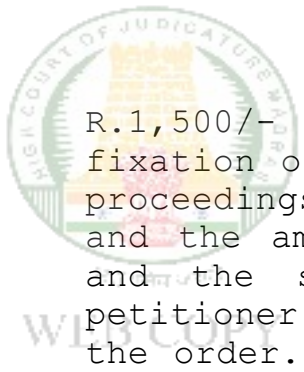


10. The next contention of the revision petitioner is that the revision petitioner had successfully proved the factum of improper refusal of the respondent to live with him and as such, the respondent is not entitled for maintenance, as she has not shown any justifiable reason for living separately. The revision petitioner in his evidence before the trial Court would admit in clear terms that he is duty bound to maintain his wife and son. When a specific question was put to the revision petitioner during his cross examination as to whether he is ready to take his wife and son from the Court campus on that day itself, he would reply that he is not ready as she had refused earlier. He would further say that the respondent has preferred a complaint against him, his mother and sister on 13.10.2008 before the Inspector of Police, South PS, Thoothukudi and would add that the complaint is false. He would admit that the above criminal case was proceeded in the Court of the Judicial Magistrate No.I, Tuticorin and his sister was convicted. As already pointed out, the revision petitioner alone has filed the divorce petition and that too in the year 2010 and subsequently, the respondent has filed a petition seeking restitution of conjugal rights. Considering the above, the finding of the trial Court that the respondent is entitled to get maintenance from the revision petitioner cannot be found fault with.

11. As already pointed out, though the respondent has claimed monthly maintenance of Rs.10,000/-, the trial Court taking into account the amount of maintenance awarded in M.C.No.25 of 2011, has fixed the monthly maintenance at Rs.3,250/-. It is the specific case of the respondent that the revision petitioner is working at Gnanam Bakery, Tuticorin and is earning Rs.15,000/- per month and that the petitioner is having a own house and immovable properties worth about Rs.40,00,000/-. The revision petitioner in his cross examination evidence would admit that he is owning a house in 6th street of Anna Nagar, Tuticorin.

12. According to the revision petitioner, he is only getting salary of Rs.4,000/- per month and that he has no other means or capacity to pay the maintenance amount. No doubt, the revision petitioner has produced the pay slip allegedly for the month of January, but the same does not contain the year nor the date of issue. The revision petitioner has not chosen to summon his employer or any other staff attached to that Bakery to prove his salary. As rightly observed by the learned trial Judge, now a days a person doing a coolie work is getting Rs.300/- per day and is earning Rs.15,000/- per month.

13. Considering the entire facts and circumstances and also the status of the parties and the present economic scenario and also the fact that the revision petitioner has been paying



R.1,500/- as per the order passed in M.C.No.25 of 2011, the fixation of the monthly maintenance at Rs.3,250/- in the present proceedings under Section 125 Cr.P.C., cannot be found fault with and the amount awarded by the learned trial Judge is reasonable and the same cannot be said to be excessive. The revision petitioner has not advanced any other reason or ground to impugn the order. Hence, this Court decides that the revision 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 parties are to be directed to bear their own costs and the above point is answered accordingly.

14. In the result, this Criminal Revision Case is dismissed. Parties are directed to bear their own costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

trp

To

The Chief Judicial Magistrate, Thoothukudi, Thoothukudi District.

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-12812[F] dated 22/03/2021)

+1 CC to M/s.P.BANUPRASATH, Advocate (SR-12627[F] dated 19/03/2021)

order made in
CRL.RC(MD).No. 41 of 2017 and
Cr1.M.P(MD).No.397 of 2017
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VB (04/05/2021) 5P / 4C