



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.02.2021

Pronounced on : 08.03.2021

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C. (MD).No.436 of 2017

S.Masanan : Petitioner/Respondent

Vs.

1.Parimala Devi
2.Minor Kusharna : 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 in M.C.No.12 of 2015 on the file of the Judicial Magistrate No.II, Usilampatti, order dated 21.04.2017 and allow the revision petition.

For Petitioner : Mr.N.Marimuthu, Advocate

For Respondents : Mr.Kevinkaran, Advocate

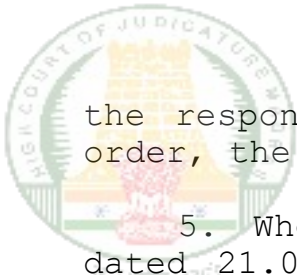
ORDER

The Criminal Revision Case is directed against the order passed in M.C.No.12 of 2015, dated 21.04.2017 on the file of the Court of Judicial Magistrate No.II, Usilampatti.

2.It is not in dispute that the marriage between the revision petitioner and the first respondent was solemnized on 25.02.2010, that due to their wed-lock, the second respondent was born to them and that subsequently, there arose misunderstanding between them and are living separately.

3.The first respondent, by invoking Section 125 of Cr.P.C has filed the case in M.C.No.12 of 2015, claiming maintenance for herself and for her minor daughter at Rs.20,000/- per month.

4.The revision petitioner has filed the counter statement disputing the liability and the quantum of the maintenance amount fixed by the learned trial Judge. The learned Judicial Magistrate, upon considering the evidence and on hearing the arguments of both sides, has passed the impugned order on 21.04.2017, directing the revision petitioner to pay monthly maintenance of Rs.5,000/- each to



the respondents from the date of petition. Aggrieved by the said order, the husband has come forward with the present petition.

5. Whether the impugned order passed in M.C.No.12 of 2015, dated 21.04.2017 on the file of the Court of Judicial Magistrate No.II, Usilampatti, is liable to be set aside? is the point for consideration.

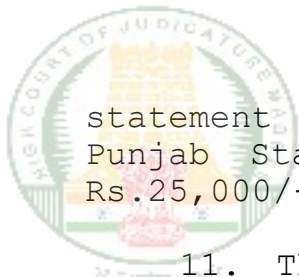
6.The revision petitioner / husband and the first respondent/wife, as usual in the matrimonial proceedings have raised allegations and counter allegations against each other. The revision petitioner has challenged the liability to pay maintenance on the ground that the first respondent on her own deserted the revision petitioner and refused to stay with him.

7.It is not in dispute that the revision petitioner has filed the petition in H.M.O.P.No.84 of 2014 for divorce and the same is pending on the file of the Sub Court, Usilampatti. The petitioner has not chosen to file the copy of the divorce petition and as such, it is not known, the grounds on which, he has claimed the divorce. No doubt, as per Section 125 (4) Cr.P.C., the revision petitioner is not liable to pay maintenance to his wife, in case, if he proves that his wife is refusing to live with him without any sufficient reason or that if he proves that she is living in adultery.

8. No doubt, though the revision petitioner has alleged that the first respondent was having some extra martial affairs with one Gnamuthu, as rightly observed by the learned Magistrate, he has not produced any iota evidence to substantiate the same. As rightly observed by the learned Magistrate, the revision petitioner has also not produced any evidence to show that the first respondent was refusing to live with him without any sufficient reason or ground.

9.During the cross examination of the first respondent as P.W.1, it was suggested that she alone had left the matrimonial house voluntarily, she would say that she was driven out forcibly. The revision petitioner has himself admitted that the first respondent has lodged a complaint against him and other family members with the All Women Police Station, Usilampatti. As rightly contended by the respondents side, it is not the case of the revision petitioner that he had taken necessary action or proceedings to join with the respondent. In the absence of any evidence, the contention of the revision petitioner that the first respondent alone had deserted him, is devoid of substance and is liable for rejection.

10.Now coming to the quantum of maintenance, it is the specific case of the first respondent that the revision petitioner is working in Military and he is getting salary at Rs.45,000/- and that he is also doing money lending business and is getting income at Rs.25,000/- per month. The revision petitioner in his counter



statement would admit that he was working as a G.D Constable in Punjab State at that time and was getting monthly salary at Rs.25,000/-.

11. The revision petitioner has further stated that he had obtained personal loan of Rs.3,50,000/-; home loan at Rs.6,50,000/- and hence, a sum of Rs.8,299/- was deducted towards repayment of personal loan and a sum of Rs.7,555/- was deducted towards repayment of home loan and that after all deductions, he is only getting meagre amount. He has further stated that as his mother was not well, he borrowed a sum of Rs.3,00,000/- for the medical expenses of his mother and is repaying the same with interest at Rs.3/- per Rs.100/- per month.

12.The learned Magistrate, on perusing the evidence, has rightly observed that the revision petitioner had obtained loans with sole intention to avoid the payment of maintenance to the respondent. Whatever it is, the revision petitioner, after availing so many loans, cannot be allowed to say that he is getting only a meagre salary after deductions towards repayment of loan and etc.

13.The revision petitioner in his evidence would admit that he is owning a house property. Though the revision petitioner has filed Ex.R.1 to Ex.R.3 Bank Book and loan statements to prove his loans and schedule of repayment, he has not chosen to produce the salary slip or salary certificate. As rightly pointed out by the learned counsel for the respondents, the revision petitioner would be getting more salary, after implementing 7th pay commission.

14.Considering the above facts and circumstances and also the status of the parties and the present economic scenario, the fixation of monthly maintenance at Rs.5,000/- each to the respondents by the learned Judicial Magistrate cannot be found fault with and the same is very much reasonable and cannot said to be excessive. 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, 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 (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

1.The Judicial Magistrate No.II,
Usilampatti.

2.The Section Officer,
Criminal Section, (Records) 2 Copies
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.N.MARIMUTHU, Advocate (SR-9553[F] dated 09/03/2021)

CRL.R.C. (MD) .No.436 of 2017
08.03.2021

DAS
TK/SAR/16.03.2021/4P/5C