



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.03.2021

Pronounced on : 19.03.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

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CRL.R.C.(MD).445 of 2017

and

CRL.M.P.(MD)No.4662 of 2017

Senthilkumar : Petitioner/Respondent

Vs.

Minor Sowmiya : Respondent/Petitioner

(Minor respondent represented by her
mother and natural guardian Geetha)

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order passed by the learned Family Court at Srivilliputhur, Virudhunagar District in M.C.No.46 of 2015, dated 27.03.2017 and consequently, allow the revision petition.

For Petitioner : Mr.S.Durai Saravanan.

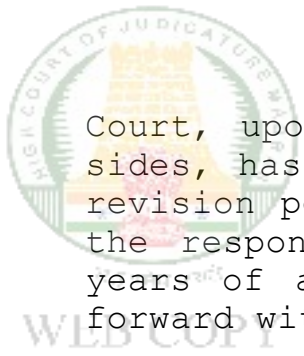
For Respondent : Mr.A.D.Ganesa Moorthy.

ORDER

The Criminal Revision Case is directed against the order passed in M.C.No.46 of 2015, dated 27.03.2017, on the file of the Family Court, Srivilliputhur, Virudhunagar District.

2.It is not in dispute that the marriage between the revision petitioner and the respondent's mother Geetha was solemnized on 01.06.2005, that due to their wed-lock, the respondent was born to them on 07.02.2007, that subsequently, there arose misunderstanding between the revision petitioner and the said Geetha and that they are living separately.

3.It is not in dispute that the revision petitioner has filed a petition in H.M.O.P.No.226 of 2010, claiming divorce against his wife Geetha, on the file of the Subordinate Court, Srivilliputhur and that after enquiry, the learned Subordinate Judge has passed an order dated 22.09.2017, dissolving the marriage solemnized between the revision petitioner and the respondent's mother on 01.06.2005. The respondent, by invoking Section 125 Cr.P.C, has claimed monthly maintenance at Rs.10,000/- against her father/the revision petitioner. The revision petitioner has filed a counter statement disputing the liability. The learned Judge of Family



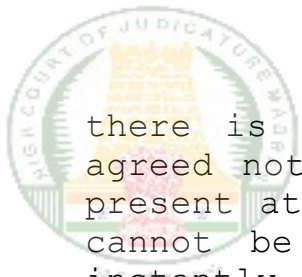
Court, upon considering the evidence adduced and on hearing both sides, has passed the impugned order on 27.03.2017, directing the revision petitioner to pay monthly maintenance at Rs.7,000/- to the respondent from the date of petition till her attaining 18 years of age. Aggrieved by the said order, the father has come forward with the present revision.

4. Whether the impugned order passed in M.C.No.46 of 2015, dated 27.03.2017, on the file of the Family Court at Srivilliputhur, Virudhunagar District, is liable to be set aside ? is the point for consideration.

5. The learned counsel for the revision petitioner would contend that divorce was granted subject to the condition that the revision petitioner has to pay a sum of Rs.10,10,000/- to the mother of the respondent and the same was also paid by the revision petitioner, that the respondent's mother assured at that time that she will not claim any maintenance in respect of the respondent and that therefore, the question of payment of any maintenance to the respondent does not arise at all. He would further contend that the respondent's mother was well settled and is having sufficient monthly income, that the respondent's mother is getting huge amount of pension on the death of her father and that the revision petitioner is facing financial crisis and is unable to eke out his livelihood daily.

6. The learned counsel for the revision petitioner would further submit that the monthly maintenance amount fixed at Rs.7,000/- is highly exorbitant and the same was passed without any proper explanation and the basis of which, such an amount was fixed. No doubt, it is not in dispute that in H.M.O.P.No.226 of 2010, the learned Subordinate Judge, by observing that the wife has agreed for divorce, in case of payment of total alimony, that husband has paid Rs.10,10,000/- towards life time alimony, that the wife has received and admitted the receipt of the said payment and that since neither the parties were willing to live with the other and as there is total breakdown of marriage, allowed the petition and thereby dissolving the marriage between them.

7. It is evident from Ex.R.6 divorce order, that both the parties therein, the revision petitioner and the respondent's mother have agreed that they will together look after the welfare of the child even after their separation. As rightly contended by the respondent's side, nowhere in Ex.R.6 order, it has been stated that the respondent's mother had agreed or assured that she will not claim any maintenance in respect of minor daughter. Since the petitioner as well as the respondent's mother have specifically agreed to look after the welfare of the respondent herein and as



there is no evidence to show that the respondent's mother had agreed not to claim any maintenance for her minor daughter, the present attempt of the revision petitioner to evade the liability cannot be entertained and the same is liable to be rejected instantly.

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8.The next contention of the revision petitioner is that since the respondent's mother is having necessary means and the revision petitioner is facing financial crisis, he is not liable to pay any maintenance. The above contention is also very much against the joint undertaking given by the revision petitioner and the respondent's mother before the matrimonial Court to look after the welfare of their daughter jointly together. No doubt, the revision petitioner in an attempt to prove that the respondent's mother is well settled financially, has produced Ex.P.4 Award of the Motor Accident Claims Tribunal and the legal notice under Ex.P.5 sent to the TNEB to give particulars about the payment of retirement benefits of the deceased Veluchamy to his wife, son and the daughter Geetha.

9.In the revision memorandum, the revision petitioner has alleged that the respondent's mother is getting huge amount of pension on the death of her father. As rightly contended by the learned counsel for the respondent, the revision petitioner has not clarified as to how the married daughter is entitled to get pension on the death of her father, when her mother, that is the wife of the deceased is very much alive and available. Whatever it is, since both the revision petitioner and his wife had agreed to look after the respondent, it is not necessary to probe the wherewithal or financial capacity of the respondent's mother in the present case.

10.Admittedly, the respondent is under the care and custody of her mother. Since the respondent has laid the above case claiming maintenance from the revision petitioner, the petitioner is not entitled to canvass a stand that he is not liable as the respondent's mother is well settled. Though he had taken a stand that he is facing the financial crisis, he has not produced any evidence to substantiate the same.

11.It is pertinent to mention that the revision petitioner, after filing of the maintenance case by the respondent, has filed a petition in G.W.O.P.No.19 of 2019 to appoint the revision petitioner as the guardian for the minor respondent and in that petition, as rightly pointed out by the respondent's side, the revision petitioner has specifically stated that he is earning good income as a partner in the Mill at Rajapalayam and that he can maintain the minor respondent in a better manner by providing food, education and health.



12.Though the respondent has claimed monthly maintenance at Rs.10,000/-, the learned Judge has only granted monthly maintenance at Rs.7,000/-. It is pertinent to mention that in the main petition, it has been specifically stated by the mother and guardian of the respondent, that she has been spending Rs.1,20,000/- per year towards school fees, uniform, medical charges, food, dresses and for auto charges and produced the receipts under Ex.P.3 to Ex.P.6 for payment of school fees, tuition fees and study material. It is not in dispute that at the time of filing of the above maintenance case, the respondent was studying in third standard in English Medium at Lions School, Srivilliputhur.

13.Considering the above facts and circumstances of the case, the educational expenses of the respondent, status of the parties and the present economic situation, the fixation of the monthly maintenance at Rs.7.000/- by the trial Court cannot be found fault with and this Court is in entire agreement with the determination and fixation of monthly maintenance at Rs.7,000/- to the minor respondent. The revision petitioner has not canvassed any other reasons or ground to modify the quantum fixed by the trial Court. Hence, this Court decides that the above 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 the parties are to be directed to bear their own costs.

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

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)

das

To

1.The Judge, Family Court,at Srivilliputhur,
Virudhunagar District.



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

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+1 CC to M/s.S.DURAI SARAVANAN, Advocate (SR-12666[F] dated
22/03/2021)

+1 CC to M/s.A.D.GANESHA MOORTHY, Advocate (SR-13003[F] dated
23/03/2021)

CRL.R.C. (MD) .445 of 2017
and
CRL.M.P. (MD) No.4662 of 2017
19.03.2021

es (CO)
TR(24.04.2021) 5P 6C