



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.03.2021

Pronounced on : 15.03.2021

CORAM

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

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CRL.R.C. (MD).525 of 2017

and

Crl.M.P. (MD)No.5882 of 2017

A.Elangovan : Petitioner

Vs.

1.Ramalakshmi

2.Sivaprakash : Respondents

(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 relating to the order dated 10.08.2016 made n M.C.No.4 of 2015 on the file of the District Munsif cum Judicial Magistrate No.I, Usilampatti and set aside the same.

For Petitioner : Mr.D.Sadiq Raja
For Respondents : Mr.G.Marimuthu

ORDER

The Criminal Revision Case is directed against the order passed in M.C.No.4 of 2015, dated 10.08.2016 on the file of the Court of District Munsif cum Judicial Magistrate No.I, Usilampatti.

2.It is not in dispute that the marriage between the revision petitioner and the first respondent was solemnized on 12.09.2012, that due to their wed-lock, the second respondent was born to them on 30.05.2013, that subsequently there arose misunderstanding between them and that they are living separately.

3.The first respondent, for herself and for her minor son / the second respondent herein, by invoking Section 125 of Cr.P.C., has laid the case in M.C.No.4 of 2015, claiming monthly maintenance at Rs.10,000/-. The revision petitioner has filed a counter statement, disputing the paternity of the second respondent and consequently, the liability to pay the maintenance and prayed for dismissal.

4.The learned Judicial Magistrate, upon considering the
<https://hcservices.ecourts.gov.in/hcservices/>



evidence adduced, has passed the impugned order on 10.08.2016, directing the revision petitioner to pay Rs.2,500/- 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.4 of 2015, dated 10.08.2016 on the file of the Court of District Munsif cum Judicial Magistrate No.I, Usilampatti, is liable to be set aside ? is the point for consideration.

6. The learned counsel for the revision petitioner would contend that the trial Court has passed the maintenance order without sufficient records and the contention made in the counter statement as to the paternity of the child. No doubt, the revision petitioner in his counter statement has alleged that their marriage was not at all consummated, that the first respondent and her parents had suppressed the pregnancy of the first respondent and conducted the marriage and thereby, cheated the revision petitioner and his family and that the second respondent was not born to the revision petitioner.

7. The learned Magistrate, by relying the birth certificate of the second respondent under Ex.P.4 has observed that the revision petitioner has been shown as the father of the second respondent / 2nd petitioner. More over, the revision petitioner has not taken any steps before the trial Court nor any other proceedings to prove that he was not the father of the second respondent. In the absence of any evidence and on considering the facts that the revision petitioner had specifically admitted his marriage with the first respondent and that the revision petitioner has been shown as the father of the second respondent in Ex.P.4 certificate, the defence of the revision petitioner disputing the paternity of the second petitioner is devoid of substance and is liable for rejection.

8. The next contention of the learned counsel for the revision petitioner is that the trial Court has failed to consider the intention and attitude of the first respondent, that the first respondent had voluntarily left the matrimonial home without any reasons, and that she was in the habit of preferring false complaints before the police and subsequently, used to withdraw the same. According to the respondents, the revision petitioner at the instigation of his mother, grand parents and his sister had demanded the additional dowry and harassed her and sent her out of the matrimonial home and hence, the first respondent was forced to file a complaint on 28.05.2013 before the All Women Police Station, Uilampatti.

9. It is further case of the first respondent that the first respondent had attempted to enter into matrimonial home along with the second respondent on 18.12.2014, the revision petitioner's



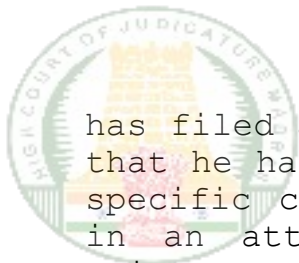
mother, grand parents and his sister refused to allow the respondents to enter into the house and dragged her by holding her hair and directed the first respondent to return home, only after getting Rs.3,00,000/- as additional dowry, failing which, they would arrange another marriage for the revision petitioner, that the first respondent has again preferred a complaint on 19.12.2014 before the All Women Police Station, Usilampatti and that the revision petitioner had agreed to arrange for a separate house and to live with the respondents.

10.It is their further case that since the revision petitioner and his family members had demanded dowry again, she lodged a complaint before the Superintendent of Police and on that basis, FIR came to be registered in Crime No.27 of 2015 of the file of the All Women Police Station. As rightly contended by the learned counsel for the respondents, they have produced and exhibited the receipts issued for lodging of complaints and the copy of the FIR registered in Crime No.27 of 2015 under Ex.P.3, Ex.P.5 and Ex.P.6 respectively. According to the first respondent, she is always ready and willing to live with the revision petitioner, but the revision petitioner alone had refused to live with the respondents and thereby neglected them willfully. Though the revision petitioner has alleged that the first respondent had lodged several false complaints, he has not produced any evidence to substantiate the same. It is not the specific case of the revision petitioner that he had taken necessary action or proceedings to live with the respondents.

11.On considering the evidence adduced, as rightly observed by the trial Court, it is evident that the revision petitioner has failed to prove that the first respondent had left the matrimonial home voluntarily, but on the other hand, the evidence available would go to show that the revision petitioner alone had neglected the respondents and refused to live with them. Hence, the finding of the trial Court that the revision petitioner is liable to pay maintenance to the respondents cannot be found fault with.

12.Now coming to the quantum of the maintenance, though that the respondents have claimed the maintenance at Rs.5,000/- each, the learned Magistrate has awarded monthly maintenance at Rs.2,500/- each. The learned counsel for the revision petitioner would contend that the trial Court has failed to consider that the respondents have not produced any documents to show that the petitioner was earning a sum of Rs.15,000/- as driver and Rs.50,000/- from milk business and Rs.3,00,000/- from agricultural activities, that the revision petitioner is not working as a driver anywhere and he is only searching for a job, that he has no land of his own nor any cows and that the quantum of maintenance fixed by the trial Court is very excessive.

13.It is evident from the records that the revision petitioner



has filed a copy of the sale deed as Ex.R.1, in an attempt to prove that he had already sold the only immovable property. But it is the specific complaint of the respondents that the revision petitioner in an attempt to evade his liability and to avoid payment of maintenance, has purposely executed a sale deed on 06.08.2015 in favour of his own brother and that the main case was filed on 06.07.2015 and the sale deed was executed within a month i.e., 06.08.2015. The revision petitioner has not averred any reason or explanation for executing Ex.R.1 / sale deed in favour of his brother at that point of time. Even assuming that he sold the property as alleged by him, he must be possessing the sale price. Though the revision petitioner has denied and disputed his job and income as alleged by the respondents, he has not furnished any particulars about his avocation and income.

14.Considering the entire facts and circumstances of the case and the status of the parties and also the present economic situation, the fixation of the monthly maintenance of Rs.2,500/- each to the respondents cannot be found fault with and the amount awarded is very much reasonable and the same cannot said to be excessive. The revision petitioner has not shown any other reason or ground to impugn the order of the trial 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. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)

das

To

1.The District Munsif cum Judicial Magistrate No.I,
Usilampatti.

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



+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-11132[F] dated 15/03/2021)

+1 CC to M/s.D.SADIQ RAJA, Advocate (SR-11289[F] dated 16/03/2021)

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