



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.03.2021

Pronounced on : 23.03.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.RC(MD).No. 6 of 2017 and

CrI.M.P(MD).No.62 of 2017

WEB COPY

S. Mathanakumaran : Petitioner / Respondent
Vs.

1.Lekshmikala
2.M.Jeyakumar (Minor)
rep. through its mother and
natural guardian Lekshmi Kala /
1st respondent) : Respondents / petitioners

PRAYER:- Criminal Revision Case filed under Section 397(1) r/w. section 401 Cr.P.C., to call for the records relating to the order passed by the learned Chief Judicial Magistrate, Nagercoil, dated 22.11.2016 in M.C.No.30 of 2014 and set aside the same and consequently, dismiss the said application,

For petitioner : Ms. P. Ajitha
for Mr. N. Dilip kumar
For respondent : Mr. Sugadev
for S. Palani Velayutham

ORDER

The Criminal Revision is directed against the order passed in M.C.No.30 of 2014, dated 22.11.2016 on the file of the Chief Judicial Magistrate, Nagercoil.

2. It is not in dispute that the marriage between the revision petitioner and the first respondent was solemnized on 20.08.2010 at Jesenth Mahal Marriage Hall in Punnai Nagar, Nagercoil as per Hindu Rites and Customs, that due to the wedlock, the second respondent was born to them on 01.08.2011, that the second respondent after birth is found to be suffering from genetic disorder / down syndrome, that subsequently there arose misunderstanding between the revision petitioner and the first respondent and that consequently, they are living separately. The first respondent for herself and for her minor son has filed the case in M.C.No. 30 of 2014 under Section 125 Cr.P.C., claiming monthly maintenance at Rs.8,000/- before the Court of the Chief Judicial Magistrate, Nagercoil.

3. The revision petitioner has filed the counter statement stating that the marriage was already dissolved on 05.05.2014 as per the agreement entered into between the revision petitioner and the



first respondent and the first respondent had agreed not to claim any maintenance for her and agreed to receive Rs.1,00,000/- as maintenance for her minor son and that therefore, the present case filed by the respondent is legally not maintainable.

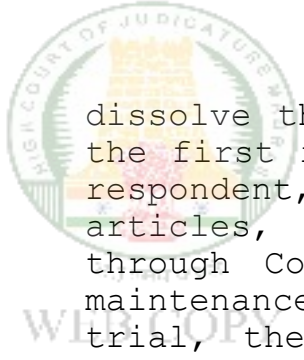
4. The learned Chief Judicial Magistrate, upon considering the evidence and on hearing the arguments of both sides, has passed the impugned order on 22.11.2016 directing the revision petitioner to pay monthly maintenance of Rs.3,000/- to the first respondent and Rs.5,000/- to the second respondent totally Rs.8,000/- from the date of order. Aggrieved by the said order, the revision petitioner / husband has come forward with the present revision.

5. Whether the impugned order passed in M.C.No.30 of 2014, dated 22.11.2016 on the file of the Chief Judicial Magistrate, Nagercoil is liable to be set aside? is the point for consideration.

6. The learned counsel appearing for the petitioner would contend that both the parties had jointly agreed to dissolve their marriage and accordingly, executed a divorce deed on 05.05.2014 under Ex.R1 in the presence of the witnesses before the Notary Public and that the revision petitioner had already given a permanent maintenance of Rs.1,00,000/- to the second respondent and also allowed the first respondent to retain all the gold ornaments, household articles and all other money received at the time of marriage. He would further contend that the learned Judge has failed to appreciate that the first respondent had specifically admitted the execution of the Ex.R1 in her main petition itself and as per the orders of this Court, the revision petitioner had established the execution of Ex.R1 by examining the Notary Public in whose presence the said document was executed.

7. No doubt, the first respondent in her main petition has stated that both of them executed a divorce deed on 05.05.2014 before the Notary Public at Nagercoil, that since no divorce has been obtained through Court of law, the divorce deed executed is void abinitio and that the marriage between the first respondent and the revision petitioner is still subsisting. The first respondent in her chief examination has reiterated the same stand with respect to Ex.R1 document and in the cross examination, she had denied her signature in the said document and also pleaded ignorance about the contents of the same. Whatever it is, as rightly observed by the learned trial Judge, since the parties are Hindus, their marriage can only be dissolved by a decree of the competent Court and not through any document entered into between the husband and wife.

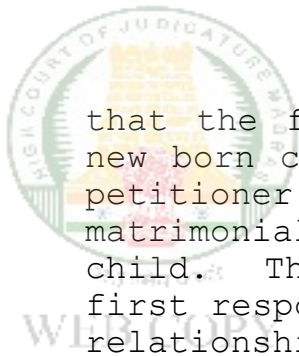
8. In the counter statement, the revision petitioner has stated that before the Execution of Ex.R1 agreement, the entire transaction between the parties was settled in the presence of the elders, but, he has not elaborated anything further. He has further stated in the counter that though the parties had agreed to



dissolve their marriage through Court of law by mutual consent and the first respondent agreed to receive Rs.1,00,000/- for the second respondent, after receiving the dowry amount and the household articles, the first respondent refused to dissolve the marriage through Court of law and also was not willing to receive the maintenance amount for the second respondent. But during the trial, the revision petitioner in his evidence before the trial Court would say that settlement negotiations were held in the police Station and as per the decision taken, they have visited the office of the Notary Public Nesayyan and executed Ex.R1 divorce deed. In cross examination, he would say that Notary Public alone had prepared Ex.R1 document and that he had handed over 35 Sovereigns of gold jewels and cash of Rs.1,50,000/- to the first respondent in the presence of the Notary Public.

9. It is pertinent to mention that when RW.2 Notary public was cross examined, a specific suggestion was put to him that Ex-R1 document does not contain the particulars about the handing over of 35 sovereigns of gold jewels and Rs.1,50,000/-, he would say that such handing over was not happened before him and that both of them had only subscribed their signatures in the document. Moreover, as already pointed out, the petitioner has only stated that in the counter as well as in his evidence that he had agreed to pay maintenance at Rs.1,00,000/- to his son and after execution of Ex.R1 document the first respondent has refused to come forward for depositing the Rs.1,00,000/- amount for the second respondent. But in the revision memorandum, it has been stated that the revision petitioner had already given permanent maintenance amount of Rs.1,00,000/- to the respondents and allowed the first respondent to retain all the gold ornaments, household articles and all other money received at the time of marriage. In cross examination, the revision petitioner would admit that he has not deposited Rs.1,00,000/- in the name of the second respondent so far and that he has not sent any letter or notice directing the first respondent to visit the bank so as to enable the revision petitioner to make the deposit.

10. Considering the above, the learned trial Judge has rightly held that Ex.R1 does not have any force in the eye of law and that the same cannot be taken advantage by the revision petitioner. The revision petitioner has taken a stand that the first respondent alone had wantonly deserted him and is living separately and as such, the first respondent is not entitled to claim any maintenance from him. The revision petitioner in his Chief cross examination before the trial Court would say that a male child was born on 01.08.2011, that the child is suffering from mental illness, that after birth of the child the first respondent came to the matrimonial house along with child, that the first respondent had refused to co-habit with the revision petitioner and that therefore, she had again returned back to her parental house to lead an amiable life. But, in cross examination he would admit



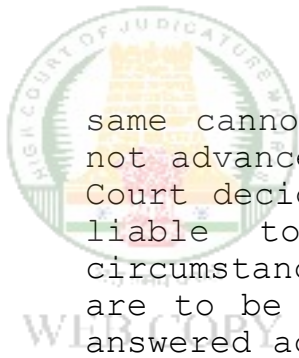
that the first respondent came to the matrimonial home along with new born child after forty one days, that she was living with the petitioner for a week and that thereafter, she had left the matrimonial home permanently after six months since the birth of the child. The main complaint of the revision petitioner is that the first respondent after birth of their son had refused to have sexual relationship with him.

11. As rightly pointed out by the learned trial Judge, since their only child has been suffering from mental illness, the first respondent naturally under distress and hence, it was very difficult to lead a normal life and that the revision petitioner instead of sharing the agony of the first respondent has started to blame the first respondent for not having sexual intercourse at that point of time. Hence, the decision of the trial Judge that the revision petitioner has failed to prove that the first respondent alone had voluntarily deserted the revision petitioner and that therefore, the revision petitioner being the husband of the first respondent and the father of the second respondent are duty bound to maintain them, cannot be found fault with.

12. Coming to the quantum of maintenance, the learned trial Judge has awarded Rs.3,000/- to the first respondent and Rs.5,000/- to the second respondent.

13. The learned counsel appearing for the petitioner would contend that the trial Court failed to appreciate that the revision petitioner is out of employment due to his nervous weakness and he is no longer employed as a lorry driver and that the first respondent herein is gainfully employed. As rightly observed by the learned Chief Judicial Magistrate, though the revision petitioner has alleged that he has been suffering from Nervous disorder, he has not produced any medical evidence to substantiate the same. As rightly observed by the learned trial Judge, though the revision petitioner has alleged that the first respondent / petitioner has been working in a fish net unit and is earning Rs.5,000/- per month, he has not produced any iota of evidence to prove the same. The first respondent in her evidence would say that the revision petitioner is hale and healthy and that he is working as a lorry driver and he is also owning a lorry. Though the revision petitioner would admit that he was previously working as the Lorry driver, due to his nervous disorder, he is unable to do the driver work. As already pointed out, he has not produced any evidence to prove his nervous ailments.

14. Considering the facts and circumstance of the case and also considering the illness of the second respondent, the status of parties and the present economic situation, the fixation of the monthly maintenance at Rs.3,000/- to the first respondent and Rs.5,000/- to the second respondent 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 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.

15. 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-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

The Chief Judicial Magistrate, Nagercoil, .

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-13672[F] dated 25/03/2021)

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NA(CO)

KB(08.04.2021) 5P 3C