



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.02.2021

Pronounced on : 01.03.2021

CORAM

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

CRL.R.C. (MD).No.679 of 2017

and

CRL.M.P. (MD)No.7730 of 2017

C.Sanjeevkumar

:Petitioner/ Respondent

Vs.

1.Mariya Jenifer

2.Minor Saranya

3.Minor.Sandhiya

: Respondents/Petitioners

(2nd and 3rd respondents/minor represented by 1st respondent/natural guardian)

PRAYER: Criminal Revision Petition has been filed under Section 397 of Cr.P.C, to call for the records in M.C.No.58 of 2013, dated 20.06.2017, on the file of the learned Chief Judicial Magistrate, Tuticorin and set aside same.

For Petitioner : Mr.K.A.Ramakrishnan,

For Respondents : Mr.S.Sivathilakar

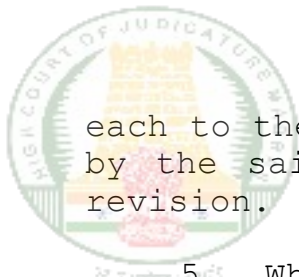
ORDER

The Criminal Revision Case is directed against the order passed in M.C.No.58 of 2013, dated 20.06.2017, on the file of the Court of Chief Judicial Magistrate, Tuticorin.

2. The first respondent, by alleging that she was living with the revision petitioner from 2001 onwards without marriage and gave birth to the respondents 2 and 3 in the year 2007 and 2008 respectively, has filed the petition under Section 125 Cr.P.C., claiming maintenance at Rs.10,000/- per month each for herself and for her two minor children.

3. The revision petitioner has specifically stated that he married the first respondent and due to their wed-lock 2nd and 3rd respondents were born to them. The petitioner, by alleging that still he is ready and willing to live happily with the first respondent and his children, and that the first respondent alone has willfully removed herself from the matrimonial house, has challenged the liability to pay maintenance.

4.The learned Chief Judicial Magistrate, upon considering the evidence and on hearing both sides, has passed the impugned order, dated 20.06.2017, directing the revision petitioner to pay monthly maintenance at Rs.2,500/- to the first respondent and Rs.2,000/-



each to the respondents 2 and 3 from the date of petition. Aggrieved by the said order, the husband has come forward with the present revision.

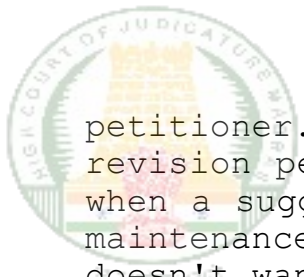
5. Whether the impugned order dated 20.06.201 passed in M.C.No.58 of 2013, on the file of the learned Chief Judicial Magistrate, Tuticorin, is liable to be set aside ? is the point for consideration.

6.The learned counsel for the revision petitioner would contend that the trial Court ought to have considered that the first respondent alone has refused to live with the petitioner without any reason, that since the first respondent had left the matrimonial house without any intimation to the petitioner, FIR came to be registered in Crime No.176 of 2013 on the file of the Sipcot Police Station as 'women missing', that the trial Court has failed to consider that the first respondent is employed and is having income for her maintenance, that the trial Court has failed to consider the admission of the first respondent that she was not in need of maintenance amount and that the trial Court has also failed to consider that the first respondent has purposely hidden the children from the Court and from the revision petitioner.

7.The learned counsel for the revision petitioner would submit that they are not disputing the liability to pay maintenance to the minor children nor the quantum fixed by the trial Court for the minor children. But, they have specifically challenged the finding of the trial Court granting maintenance to the first respondent wife.

8.As rightly pointed out by the learned counsel for the petitioner, the first respondent in her evidence before the trial Court would say that the Court has directed her to bring her children to the Court, but her children had refused to come and that both her children were not capable of taking decision by themselves at that time. In subsequent cross examination, she would attempt to give another explanation that since her children were studying in a school, they were not in a position to apply for the leave and also they were not well and hence she could not bring her children to the Court. She would admit that though the case has been passed over till 04.30.pm so as to enable her to produce her children, she has not produced her children before the Court. The revision petitioner in his counter statement has specifically stated that despite her adamant attitude, he is still ready and willing to live happily with the first respondent and his children. During cross examination of P.W.1, a specific question was put to her that her husband after withdrawing the divorce case, is willing to live with her, she would reply that she is not ready to live with the revision petitioner.

9.It is pertinent to mention that the first respondent only in her cross examination would admit her marriage with the revision



petitioner. As rightly pointed out by the learned counsel for the revision petitioner, the first respondent in her cross examination, when a suggestion was put to her that she was not entitled to claim maintenance from the revision petitioner, she would say that she doesn't want any maintenance.

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10.Considering the above facts and circumstances and also the specific admission of the first respondent that she was not in need of any maintenance and also her stand that she is not willing to live with the revision petitioner any more, the order of the trial Court in granting maintenance to the first respondent is not proper. Hence, this Court decides that the impugned order directing the revision petitioner to pay maintenance to the first respondent is liable to be set aside. But in respect of the minor children/respondents 2 and 3, as already pointed out, the learned counsel for the revision petitioner has specifically stated that they are ready and willing to pay the maintenance to the minors as awarded by the trial Court. 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.

11.In the result, this Criminal Revision Case is partly allowed and the impugned order directing the revision petitioner to pay maintenance to the first respondent is set aside and the order directing the revision petitioner to pay maintenance to the minor children/respondents 2 and 3 at Rs.2000/- each per month, is confirmed. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

To

1.The Chief Judicial Magistrate, Tuticorin.

2.The Section Officer, (records) (2C)

Criminal Section,

Madurai Bench of Madras High Court,

Madurai.

CRL.R.C. (MD) .No.679 of 2017
and
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01.03.2021

MJ (CO)

KB (08.03.2021) 3P 4C

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