



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.07.2021
PRONOUNCED ON : 30.07.2021

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.R.C.(MD) No.756 of 2017

Jaganathan : Petitioner/Respondents

Vs.

1.Jothilakshmi
2.Minor Kiruthika : Respondents/Petitioner

PRAYER: Criminal Revision Petition filed under Section 397 Cr.P.C. r/w. Section 401 of Criminal Procedure Code, to set aside the order, dated 12.06.2017 made in M.C.No.23 of 2016 on the file of the Family Court, Srivillipthur,

For Petitioner : Mr.K.Appadurai

For Respondents : Mr.A.Thiruvadi Kumar

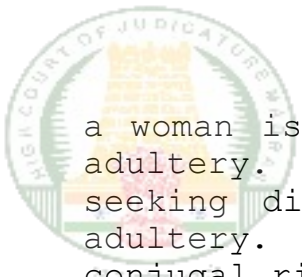
ORDER

The Criminal Revision Petition is filed by the petitioner/husband against the order passed by the learned District Judge, Family Court, in M.C.No.23 of 2016, dated 12.06.2017. The Maintenance Case was filed by the wife/respondent seeking maintenance from her husband, not only for her, but also for her minor child.

2.Heard Mr.K.Appadurai, learned Counsel for Revision Petitioner and Mr.A.Thiruvadi Kumar, learned Counsel for the Respondents.

3.On assessment of the evidence, the learned District Judge, Family Court, Srivilliputhur, ordered maintenance for a sum of Rs.1,500/- per month to the wife/first respondent and Rs.1,500/- per month to the minor child/second respondent totalling Rs.3,000/- per month. In this revision, it is agitated that the learned District, Judge, Family Court, had ignored the evidence let in by the petitioner/husband and on a wrong interpretation of law and facts, observed that even a divorced woman is entitled to claim maintenance from her husband, whereas, the reported Rulings of the Honourable Supreme Court and this Court, mentioned that a woman living in adultery is not entitled to claim maintenance from her husband.

4.The learned Counsel for the Revision Petitioner relied on the rulings of the Honourable Supreme Court and this Court stating that
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a woman is not entitled to maintenance, if she had been living in adultery. Therefore, the petitioner/husband had filed H.M.O.P., seeking divorce from the first respondent/wife on the ground of adultery. The wife had also filed a petition for restitution of conjugal rights. The petitioner/husband had obtained the decree for divorce and the petition filed by the first respondent/wife was dismissed. Based on that, he contended that the wife, who is the petitioner in M.C.No.23 of 2016 cannot maintain the maintenance case against the husband.

5.The learned Counsel for the Revision petitioner/husband had placed reliance on the Ruling of the Honourable Supreme Court in **2015 (3) MWN (Cr1.) 161**, in the case of **B.Prakash vs Deepa and others**:

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (43 of 2005), Section 20- CRIMINAL PROCEDURE CODE, 1972 (2 of 1974), Section 125 - Simultaneous claim of Maintenance under - forums under Section 125, Cr.P.C. and under Section 20 of the Act simultaneously on same set of allegations and cause of action - Not permissible being abuse of process of Court - Claim made under Section 20 subsequent to filing of Petition under Section 125, Cr.P.C., without making any fresh grounds constituting "Domestic Violence" - Order of Monetary Relief towards Maintenance under Section 20 as confirmed by Lower Appellate Court, held, liable to be set aside - Respondents can approach Magistrate under Section 20 for Maintenance in addition to Order of Maintenance under Section 125 only in case they have fresh grounds constituting Domestic Violence, which happened subsequent to passing of Order under Section 125, Cr.P.C.

6.The learned Counsel for the Revision petitioner/husband had also placed reliance on the Ruling of this Court in **2016 (1) MWN (Cr1.) 144** in the case of **M.Chinna Karuppasamy vs Kanimozhi**:

CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 125(4) - Divorce on ground of Adultery - Whether a disqualification for Maintenance claim - Divorced wife though entitled to claim Maintenance as per Explanation (b) to Section 125(1), divorce on ground of her living in adultery disqualifies her from claiming Maintenance - Disqualification on ground of her living in adultery during subsistence of marriage does not cease after passing of Decree of Divorce - Even a divorced wife living in adultery after divorce disqualified from claiming Maintenance - Living in adultery after passing of Maintenance Order also a ground for cancelling Maintenance Order - Decree of Divorce through an ex parte



evidence, sufficient proof of adultery - Trial Court rightly dismissed maintenance Claim Petition - Reversal of said Order by Sessions Court in Revision granting maintenance, held, not correct.

7. Based on the said rulings, the learned Counsel for the Revision Petitioner/husband submitted that the wife/first respondent is not entitled to claim compensation from the husband/respondent in M.C.No.23 of 2016. Therefore, based on the Rulings of the Honourable Supreme Court and this Court, the findings of the learned Principal District Judge, Srivilliputhur, is found perverse. Therefore, it is to be set aside.

8. The learned Counsel for the first respondent/wife vehemently objected to the submissions of the learned Counsel for the Revision Petitioner/husband, stating that the learned District Judge, Family Court, Srivilliputhur, had properly appreciated the facts in the light of the rulings of the Honourable Supreme Court and this Court regarding the right of the woman to claim maintenance. When that be the case, the petitioner/husband cannot question the maintainability of the petition and this Criminal Revision is to be set aside.

Points for consideration:

(1) Whether the maintenance ordered by the learned District Judge, Family Court, Srivilliputhur, dated 12.06.2017, in M.C.No.23 of 2016, is maintainable against the respondent?

(2) Whether order passed by the learned District Judge, Family Court, in M.C.No.23 of 2016, dated 12.06.2017, is to be set aside?

9. On perusal of the order of the learned District Judge, Family Court, Srivilliputhur, in M.C.No.23 of 2016, dated 12.06.2017 and on consideration of the rival submissions of the learned Counsel for the Revision Petitioner and Respondents and evidence of the parties concerned, it is found that the claim of maintenance by the first respondent/wife, who was already granted decree of divorce, cannot maintain the maintenance case against the petitioner/husband after the grant of decree of divorce in favour of the petitioner/husband on the ground of adultery. The finding of the learned District Judge, Family Court, Srivilliputhur, had not yet reached finality. Till such time, the petitioner in M.C.No.23 of 2016 is not entitled to claim maintenance in the light of Ex.P1.

10. In the light of the Rulings cited by the learned Counsel for the Revision Petitioner in **2015 (3) MWN (Cr1.) 161**, in the case of **B.Prakash vs Deepa and others**: and **2016 (1) MWN (Cr1.) 144** in the case of **M.Chinna Karuppasamy vs Kanimozhi**, a divorced woman, who had been divorced on the ground of adultery cannot seek maintenance from her husband. The said ratio applies to the case on hand. Therefore, Rs.1,500/- ordered as maintenance from her husband to the wife herein is not maintainable in the light of the above Rulings,



particularly, when the husband had obtained the decree of divorce on the ground of adultery from the wife.

11. Under those circumstances, the order passed by the learned Judge, Family Court, Srivilliputhur, in M.C.No.23 of 2016, dated 12.06.2017 regarding the maintenance to the wife is against the Rulings of the Honourable Supreme Court (cited supra). Therefore, the same is perverse.

The points for consideration are answered in favour of the petitioner/husband and against the first respondent/wife.

In the result, this Criminal Revision Petition is partly allowed and the order passed by the learned District Judge, Family Court, Srivilliputhur, in M.C.No.23 of 2016, dated 12.06.2017, is set aside insofar as the first respondent/wife is concerned and the insofar as the order in favour of the minor child/second respondent herein is concerned, the same is confirmed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

The District Judge,
Family Court,
Srivilliputhur.

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-24622[F] dated 30/07/2021)

+1 CC to M/s.K.APPADURAI, Advocate (SR-24639[F] dated 30/07/2021)

order made in
CRL.R.C. (MD) No.756 of 2017
30.07.2021

CN(09.08.2021) 4P 4C