



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 11.03.2021

Pronounced On : 29.03.2021

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

CRL.R.C. (MD) .No.889 of 2017

1.Manimegalai

2.Minor.Sanjaikumar

: Petitioners / Petitioners

(Rep by his guardian and mother Manimegalai)

Vs .

Sivakumar

: Respondent / Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 and 401 of Cr.P.C, to set aside the order of the learned District Munsif cum Judicial Magistrate, Vendasandur, dated 23.10.2017 made in M.C.No.20 of 2009 and allow this criminal revision.

For Petitioner : Mr.G.Gomathi sankar

For Respondent : Mr.Arun Srivarsava,
for Mr.J.Lawrance

ORDER

The Criminal Revision Case is directed against the order passed in M.C.No.20 of 2009, dated 23.10.2017 on the file of the learned District Munsif cum Judicial Magistrate, Vendasandur.

2.It is not in dispute that the marriage between the first petitioner and the respondent was solemnized on 13.06.2002 at Palaniappagounder Thirumanamandapam, Kasipalayam, Kalluvarpatti, Vendasandur Taluk, that due to their wed-lock, the second respondent was born to them in the year 2003, that subsequently there arose misunderstanding and disputes between them and that they are living separately.

3.The revision petitioner for herself and for her minor son has filed the case in M.C.No.20 of 2009 under Section 125 of Cr.P.C, against the respondent claiming monthly maintenance at Rs.5,000/- each totally Rs.10,000/-. The respondent has filed a counter statement by alleging that he has been ready and willing to live with the petitioners, disputed the liability and prayed for dismissal.

4.The learned Magistrate, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the



impugned order on 23.10.2017 dismissing the maintenance claim. Aggrieved by the said order, the petitioners have come forward with the present revision.

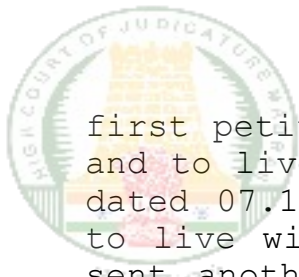
5. Whether the impugned order of dismissal passed in M.C.No.20 of 2009, dated 23.10.2017, on the file of the District Munsif cum Judicial Magistrate, Vendasandur, is liable to be set aside ? is the point for consideration.

6. Admittedly, the first petitioner and the respondent are closely related to each other prior to marriage and that the father of the first petitioner is the brother of the respondent's mother. It is not in dispute that the first petitioner's father has been doing money lending business in Andhra Pradesh State. It is also not in dispute that the respondent prior to marriage has been running a grocery shop in their village Kalluvarpatti along his brother Shanmugasundaram. It is not in dispute that after marriage, the first petitioner and the respondent have started their martial life in the house of the respondent and that after three months, they had shifted their residence to the garden house at Kalluvarpatti, belonging to the 1st petitioner's father.

7. The first petitioner has stated in her main petition that she was always willing to live with the respondent. The respondent, also in his counter statement, has stated that he has been ready and willing to live with the petitioners and that he prayed for dismissal of the petition, by directing the first petitioner to live with the respondent. It is evident from the records that the first petitioner/wife and the respondent/husband have hurled allegations and counter allegations against each other and went to the extent of alleging that the other party is living in adultery. The first petitioner, stating that the respondent is having illicit affairs with one Tamilarasi of Kurumbupatti and whereas, the respondent has alleged that the first petitioner has been living with her own maternal uncle Thiruppathi from 2008 onwards and she is living in adultery.

8. It is evident from Ex.P.9 that the respondent has filed a petition in H.M.O.P.No.12 of 2013, claiming divorce on the ground of adultery and the same is pending on the file of the Sub Court, Vendasandhur. The first petitioner has alleged that the respondent along with his family members had demanded additional dowry, forcibly snatched 20 sovereigns of jewels given at the time of marriage and the respondent at the instigation of his family members had harassed and tortured her.

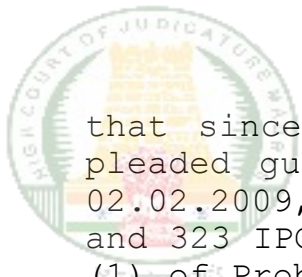
9. The learned Magistrate, upon considering the evidence, has rightly observed that the charges levelled by the first petitioner were not proved. It is not in dispute that the respondent has sent a legal notice on 03.11.2008 under Ex.P.2 (Ex.R.5), directing the



first petitioner to come over to the respondent's matrimonial house and to live with him and that the first petitioner has sent a reply dated 07.11.2008 under Ex.P.3 (Ex.R.6) expressing her willingness to live with the respondent, that subsequently, the respondent has sent another notice on 08.05.2009 under Ex.P.4 (Ex.R.7), that the first petitioner has also sent a reply dated 26.06.2009 under Ex.P.5 (R.8) and that thereafter, the first petitioner has filed a petition in H.M.O.P.No.162 of 2009 claiming the relief of restitution of conjugal rights on the file of the, Sub Court, Vedsanthur. It is also not in dispute that since the respondent has filed a counter statement expressing his readiness and willingness to live with the first petitioner and that since both the parties have expressed their readiness to live jointly, the same was recorded and the petition was ordered.

10. It is not in dispute that the first petitioner as well as the respondent have preferred separate complaints before the All Women Police Station, Vadamadurai and that enquiry was conducted. According to the first petitioner, during enquiry at the police Station, the respondent had refused to live with the first petitioner and informed that they were ready to return the jewels but, they had only returned half of the jewels. During cross examination, a specific question was put to the first petitioner as to whether she handed over her thali at the police station, she would say that since the respondent side had informed that they would return the jewels, only if thali chain was handed over to them and that therefore, she had handed over the thali chain. According to the respondent, he had handed over 30 sovereigns of jewels and at that time, the first petitioner had voluntarily removed her thali and handed over to him.

11. It is the specific case of the respondent that he was forced to go to the Andhra Pradesh to help the first petitioner's father in his money lending business and after 13 months, due to misunderstanding with the first petitioner's father, the respondent had returned back to Kalluvarpatti along with the petitioners, that when the respondent had started running his grocery shop along with his brother, the first petitioner and her family members had again compelled him to come over to Andhra State, that since he refused, the first petitioner's father and their relatives came to the grocery shop of the respondent, attacked the respondent, his brother and father; and also damaged the grocery shop and that the respondent has lodged a complaint before the Koombur Police Station and on that basis, a case was registered. The respondent has produced the copy of the judgment passed in C.C.No.4 of 2009 under Ex.R.1, whereunder, it is evident that the Koombur Police has registered a case against the first petitioner's father Nallamuthu and seven others in Crime No.69 of 2008 and after filing of the final report, the case was taken on file in C.C.No.4 of 2009 on the file of the District Munsif cum Judicial Magistrate, Vedsathur and



that since the first petitioner's father and other 7 accused had pleaded guilty, the learned Magistrate has passed the judgment on 02.02.2009, convicting the accused 1 to 4 and 7 under Sections 341 and 323 IPC and releasing the accused 5, 6 and 8, invoking Section 3 (1) of Probation of Offenders Act.

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12. During cross examination of P.W.1, when the above conviction was put to her, she would say that she was not aware of the criminal case and the consequent judgment of conviction. Since the first petitioner is living under the custody of her father, the trial Court has rightly observed the evidence of the first petitioner pleading ignorance, is unbelievable.

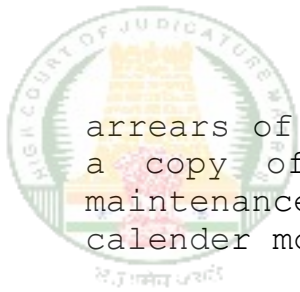
13. Considering the entire evidence available, the finding of the learned Magistrate that the first petitioner alone had deserted the respondent and is living under the care and custody of her father cannot be found fault with. Regarding the second petitioner, the trial Court has observed that since the respondent has been spending money for educational expenses of the second petitioner, there is no need to decide about the maintenance claim of the second petitioner. Admittedly, the respondent has not produced any materials to show that he has been looking after the school education of the second petitioner.

14. The learned counsel for the revision petitioners would contend that the respondent has paid the school fees for only one year and he did not pay any amount subsequently. Admittedly, the second petitioner is now under the care and custody of the first petitioner. The respondent being the father of the second petitioner, is duty bound to maintain him.

15. Considering the facts and circumstances of the case, the educational expenses of the second petitioner and the present economic situation, this Court fixes the monthly maintenance at Rs.4,000/- for the second petitioner and the respondent is liable to pay the same from the date of the revision.

16. Considering the above, the decision of the trial Court in rejecting the maintenance claim of the first petitioner cannot be found fault, but at the same time, the decision of the learned Magistrate in rejecting the claim of the second petitioner is not good in law and the same is liable to be set aside. 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.

17. In the result, the Criminal Revision Case is partly allowed and the respondent is directed to pay monthly maintenance at Rs.4,000/- to the second petitioner through the first petitioner from the date of revision. The respondent is directed to pay the



arrears of maintenance within two months from the date of receipt of a copy of this order and further directed to pay the future maintenance amount on or before 10th of every succeeding English calendar month. Parties are directed to bear their own costs.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

To

1.The District Munsif cum Judicial Magistrate,
Vedasandur

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

+1 CC to M/s.G.GOMATHI SANKAR, Advocate (SR-14230[F] dated
29/03/2021)

+1 CC to M/s.J.LAWRANCE, Advocate (SR-14388[F] dated 30/03/2021)

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SRK(CO)
KB(15.04.2021) 5P 6C