



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 02.07.2021

ORDER PRONOUNCED : 03.09.2021

CORAM

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

Crl.R.C.(MD) No. 918 of 2017

WEB COPY

S.Sivakumar

... Petitioner

-vs-

1.Sakthiveeralakshmi

2.Minor Samirtha Dhanyashri

... Respondents

(Minor is represented through the First Respondent/Mother)

PRAYER:- This Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the order dated 20.10.2017 in M.C.No.11 of 2015 on the file of the Family Court, Srivilliputhur.

For Petitioner : Mr.C.Muthusaravanan

For R1 : Mr.A.Sivaji

ORDER

This Criminal Revision Case is filed to set aside the order dated 20.10.2017 passed in M.C.No.11 of 2015 by the Court of the learned Judge, Family Court, Srivilliputhur.

2.The short facts, which are relevant for consideration in this case, are as follows:-

2.1.The revision petitioner herein is the husband. The 1st respondent is the wife of the revision petitioner. The revision petitioner/husband is a Diploma Holder in Mechanical Engineering (DME) and working as Service Engineer in Air India at Trivandrum Airport. After marriage, the 1st respondent/wife went to live in her matrimonial home at Mumbai, where the petitioner/husband ill-treated her after consuming Alcohol. She had tolerated all the abusive behaviour of him as there was no one to come to her rescue because of the language which was unknown to her and hence, she was unable to communicate with her neighbours.

3.After coming to the native place, the 1st respondent/wife delivered a child. But, the petitioner/husband had not taken the wife and the minor child to Mumbai. Further, he refused to pay maintenance. Therefore, she filed maintenance case before the Court



of the learned Chief Judicial Magistrate, Srivilliputtur. After constitution of the Family Court at Srivilliputtur, the case from the Court of the learned Chief Judicial Magistrate, Srivilliputtur in M.C.No.22 of 2012 was transferred to the file of the learned Judge, Family Court, Srivilliputtur and renumbered the case as M.C.No.11 of 2015. Meanwhile, the husband/petitioner had filed a petition for divorce in the Court of the learned Civil Judge (SD) at Kalyan in M.P.No.879 of 2011.

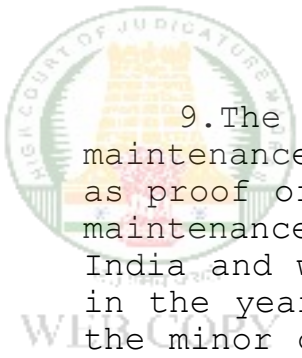
4.The 1st respondent/wife filed a transfer petition before the Hon'ble Supreme Court and the Hon'ble Supreme Court had transferred the divorce petition case to the Court at Srivilliputtur. Presently, the petitioner/husband is serving at Trivandrum Airport. The petition for divorce filed by the husband at Kalyan was transferred to the Court of the learned Judge, Family Court, Srivilliputtur and the same is pending.

5.When the case came up for hearing on the previous occasion i.e., on 29.04.2021, the learned counsel for the revision petitioner sought time to put forth the arguments after the summer vacation. Therefore, the case was adjourned to 24.06.2021.

6.On 24.06.2021, when the case came up for hearing, the learned counsel for the revision petitioner sought short time on the ground of reporting compromise between the parties and also submitted that the maintenance case was filed by the first respondent against the petitioner herein. The learned counsel for the first respondent/wife submitted that as per the order passed in M.C.No.11 of 2015 on the file of the Family Court, Srivilliputhur, dated 20.10.2017, the petitioner/husband was directed to pay a sum of Rs.33,00,000/- (Rupees Thirty Three Lakhs only) to the respondents, however, the petitioner had not paid any amount to the respondents. He further submitted that the revision petitioner had filed a divorce petition and obtained a divorce.

7.On 24.06.2021, this Court directed the petitioner to prove his *bona fide* by paying part of the arrears of Rs.33,00,000/- (Rupees Thirty Three Lakhs only) to the respondents counsel by way of demand draft on or before 29.06.2021. On 29.06.2021 when the case came up for hearing, the learned counsel for the revision petitioner sought time for arguments. On his request, the matter was directed to be listed today i.e., 02.07.2021.

8.Today, when the case came up for hearing, it is found that after conducting enquiry based on the evidence of the petitioner and the 1st respondent in the maintenance case, the learned Judge, Family Court had allowed the maintenance case, directing the respondent/husband to pay a sum of Rs.13,000/- per month to the 1st petitioner therein/wife and Rs.20,000/- per month to the 2nd petitioner therein/minor child from the date of filing the petition of realization.



9.The petitioner herein/husband as respondent in the maintenance case did not file any salary slip or salary certificate as proof of salary. It is the case of the 1st petitioner/wife in the maintenance case that her husband/respondent was employed in Air India and was paid Central scale of pay i.e., Rs.45,000/- per month in the year 2009. Therefore, she sought Rs.20,000/- for herself and the minor child. The learned Judge after assessing the evidence and considering the pay revision for the Central Government Staff arrived at notional increase and thereby coming to a conclusion that he may be receiving a salary of Rs.1,20,000/- per month approximately .

10.It is the case of the respondent/husband in the maintenance case that his wife completed B.Ed and working in a school. She has sufficient means. Therefore, he need not pay her as she refused to join him in matrimony.

11.In the course of the evidence, the learned Judge, Family Court, Srivilliputtur had, on the basis of the evidence, considered the fact that the respondent/husband had not taken steps to invite her to join him in matrimony. He had not issued any notice calling her to join him. He had refused to take her to the matrimonial home. He had refused to maintain his wife and his minor child. The learned Judge had also considered the rebuttal in the counter filed by the respondent/husband disputing the contention of the 1st petitioner/wife that he has been receiving a sum of Rs.45,000/- as early in 2009. If the intention of the respondent/husband was fair and *bona fide*, he ought to have furnished the details regarding his employment and salary. He had not done so. Therefore, the learned Judge based on the evidence available before him had arrived at a conclusion that the respondent/husband possibly had been receiving a sum of Rs.1,20,000/- roughly at the time of passing the order. Therefore, on the date of the order, he has to provide a sum of Rs.13,000/- to his wife and a sum of Rs.20,000/- to his minor child, totally a sum of Rs.33,000/-. The expenses that are met by the 1st petitioner/wife in bringing up the 2nd petitioner/minor child were given as documents, Ex.P1 to Ex.P4. The respondent/husband had not furnished any documents. Therefore, the learned Judge had arrived at the said conclusion.

12.The point of attack in the revision petition is regarding the amount arrived at by the learned trial Judge.

13.In the absence of proof of salary, which was not wantonly furnished by the petitioner herein/husband in the Family Court, the contention of the learned counsel for the petitioner/husband cannot at all be accepted by this Court. Not only that, this case is pending from the year 2017 to till date. When the case came up for hearing on 29.04.2021, 24.06.2021 and 29.06.2021 repeatedly, the learned counsel for the petitioner/husband instead of arguing the case on merits, was only arguing settlement, had sought time.



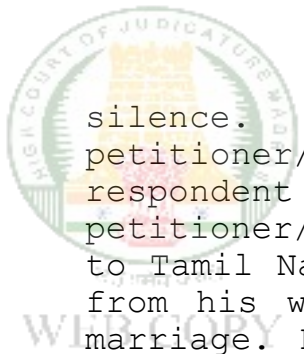
14.The learned counsel for the 1st respondent/wife disputed the contention of the learned counsel for the petitioner. Also, the learned counsel for the 1st respondent/wife submitted that in the cross-examination, the petitioner/husband denied that he was receiving a salary of Rs.45,000/- per month in 2009. He had stoutly refused to furnish his salary certificate. Therefore, the Court is justified in arriving at a conclusion that roughly he was receiving a salary of Rs.1,20,000/- per month. Therefore, he has financial capacity. Here, the petitioner has furnished the details regarding his salary from the Month of October 2012 to December 2017 in the typed set of papers.

15.As per the rulings of the Hon'ble Supreme Court in calculating the maintenance, the entire pay details are available to the Court and the loans taken by the accused are also to be included in his pay. When the wife and the minor child had not been maintained by him, he had availed a loan from PF, for which, he had to repay a sum of Rs.25,000/- per month that proves the claim of the petitioner/wife in the maintenance case before this Court that the husband failed to maintain them and leaving from the matrimonial life, forcing the wife to fend for herself working in a private school. Therefore, the learned Judge had aptly arrived at a finding that he had to pay a sum of Rs.13,000/- per month to the 1st petitioner therein/wife and Rs.20,000/- per month to the 2nd petitioner therein/minor child, totally Rs.33,000/- (Rupees Thirty Three Thousand only).

16.Immediately after the order was passed, the petitioner/husband had filed this Criminal Revision Case. Therefore, from the year 2017, this case is pending. If the husband/petitioner before this Court, as the respondent before the Family Court, Srivilliputtur, had *bona fide* intention to settle the matter with his wife amicably, there was ample time. There had been Lok Adalats conducted once in a month and Mega Adalats are being conducted once in a year based on the guidance of the Hon'ble Supreme Court through out India, so that litigants can settle their cases amicably, thereby pendency of cases are reduced.

17.This is a fit case for amicable settlement. But, the petitioner/husband did not settle the dues. He wanted to protract the proceedings, thereby keeping it pending till he retires from service. That is why, the learned counsel for the petitioner/husband was directed either to argue the case or file written submissions, failing which, the Revision Case will be dismissed. Accordingly, he was forced to argue the case.

18.The petitioner had cleverly protracted the proceedings by evading the payment for the last 4 years, which shows the attitude of the petitioner. He had contracted a marriage. After marriage, he



silence. After coming back to her native place, the petitioner//husband without courtesy did not call his wife/1st respondent to join in the matrimonial life. Now the petitioner/husband employed at Trivandrum Airport, which is nearby to Tamil Nadu as well as Virudhunagar. But he had chosen to go away from his wife and child and he had sought divorce to contract 2nd marriage. Fortunately, the 1st respondent/wife had filed a transfer petition to transfer the divorce case filed by her husband and the same was transferred to Virudhunagar, which is nearer to her place of occurrence. The petitioner/husband is enjoying the life without paying his dues to his wife and his dear child. Therefore, the contention of the learned counsel for the petitioner/husband is rejected. If his salary is considered, he has the capacity to pay the maintenance amount as ordered by the learned trial Judge. Therefore, there is no reason to interfere with the findings of the Family Court.

19.The point for consideration is answered against the petitioner/husband and in favour of the respondents/wife and minor child.

In view of the above, this Criminal Revision Case is dismissed. Therefore, counsel for the 1st respondent/wife is directed to take action through the attachment of salary of the petitioner/husband from his monthly salary by approaching the Court of the learned Judge, Family Court, Srivilliputhur for the dues payable to the respondents 1 and 2/wife and minor child, as per law.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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To

The Judge,
Family Court
Srivilliputtur.

Crl.R.C. (MD) No.918 of 2017
03.09.2021

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