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CRL.R.C.No.24 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2022

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.24 of 2020
and Crl.M.P.No.121 of 2020

B.Sakthivel

... Petitioner

Vs.

1. R.Sathyakala

2. Minor S.Nandhish Kumar

3. Minor S.Gowtham

2 & 3 being minors represented
by their natural guardian/mother

R.Sathyakala, the 1st respondent herein

... Respondents

PRAYER: Criminal Revision case has been filed under Section 397 & 401 of Cr.P.C to set aside the order passed by the learned III Additional Principal Judge, Family Court, Chennai on 31.10.2019 in M.C.No.502 of 2017 by allowing this Criminal Revision Petition.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.D.Ajithkumar

for Mr.M.Sathish Kumar

ORDER

This Criminal Revision case has been filed to set aside the order passed by the learned III Additional Principal Judge, Family Court, Chennai on



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31.10.2019 in M.C.No.502 of 2017, thereby ordered monthly maintenance of Rs.17,000/- in favour of the respondents herein.

2. The petitioner raised grounds to set aside the order passed by the Court below that the petitioner has earned only a sum of Rs.10,900/- as gross salary. Even then, the Court below ordered maintenance of Rs.17,000/- to the respondents. It is more than the gross salary received by the petitioner. Therefore, the petitioner could not comply with the order passed by the trial Court.

2.1. That apart, the first respondent had filed petition in H.M.O.P.No.4211 of 2017 on the file of the learned III Additional Principal Judge, Family Court, Chennai, for divorce on the ground of cruelty and desertion. Subsequently, it was withdrawn and the said fact was suppressed before the Court below while filing the maintenance case. Even according to the first respondent, she filed petition for divorce on the ground of cruelty and desertion. However, the petitioner never deserted her and on her own wish she is living separately. Therefore, the respondents are not at all entitled for any maintenance, when the petitioner is ready and willing to take care of the respondents.



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3. The learned counsel appearing for the respondents submitted that as against the petitioner, non-bailable warrant is pending on the file of the learned III Additional Principal Judge, Chennai, in M.C.No.502 of 2017. That apart, the condition imposed by this Court by an order dated 10.02.2020 is also not complied with by the petitioner and so far the petitioner is in arrears of Rs.9,00,000/- as monthly maintenance.

4. Heard Mr.C.Prakasam, learned counsel appearing for the petitioner and Mr.D.Ajithkumar, learned counsel appearing for the respondent.

5. On perusal of records revealed that the petitioner got married with the first respondent on 05.02.2004 and due to wedlock, they gave birth to the second and third respondents. In fact, during their marriage all the household articles and jewels were presented to the petitioner herein. Due to the torture given by the petitioner, the respondents were driven out from the matrimonial home. Thereafter, the first respondent could not maintain herself and her children. Hence, the first respondent filed maintenance case in M.C.No.502 of 2017 under Section 125 of Cr.P.C., stating that the petitioner is working as a Senior Supervisor in M/s. Intech Glass & Glazing company, Chennai and



earning salary of Rs.30,000/-. He is leading very luxurious life and doing lavish expenses and spending all the income without maintaining the respondents.

6. Before the trial Court, the first respondent examined herself as P.W.1 and in support of her contention, she marked documents as Ex.P.1 to Ex.P.12. On the side of the petitioner, he examined himself as R.W.1 and marked one document as Ex.R.1. Even in the year 2017, the second respondent was studying seventh standard and the third respondent was studying sixth standard and the entire school fees was paid by the first respondent.

7. However, the learned counsel for the petitioner submitted that the respondent wantonly deserted the petitioner and she is dancing to the tunes of one Jayaram, who is a friend of her brother. He also submits that for no fault of the petitioner, he was driven out from the home and he is suffering a lot; he met with an accident and was admitted into the hospital for more than one month; he is under financial crisis and as such he could not maintain the respondents. Moreover, he has got age old parents and he is maintaining them only with the meagre salary received by him. After the accident, he is now working as only Office Assistant in a private concern i.e., ITS Doors Pvt. Ltd and he is earning only Rs.10,500/- as monthly salary. In support of his contention, he also



produced the salary certificate issued by the said concern. He further submitted that the petitioner is ready and willing to settle the property owned by him in favour of his children.

8. The learned counsel for the respondents submitted that the petitioner is working as Technician and drawing more than Rs.30,000/- as monthly salary. He also got married with another woman and gave birth to children and he is living happily. When the petitioner is able to maintain the second wife and their children, it cannot be said that he is not capable to pay maintenance as awarded by the Court below. There is absolutely no reason to set aside the order passed by the Court below. In fact, the first respondent also lodged a complaint and the same was taken for consideration and as such she filed a petition for direction to register the case for bigamy.

9. A perusal of records revealed that on basis of the salary certificate produced by the respondent, which was marked as Ex.P6, the Trial Court ordered monthly maintenance of Rs.5000/- to the first respondent and Rs.6000/- each to the second and third respondents herein. Even as per the salary certificate produced by the respondent, in the month of March, 2015, the petitioner was drawing salary of a sum of Rs.29,037/-, in which the petitioner



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was ordered to pay maintenance of Rs.17,000/-. Admittedly, the petitioner is maintaining his aged parents. Though, the respondents alleged that the petitioner has got second marriage and the second wife gave birth to children, there is no evidence produced before the Trial Court as well as this Court to substantiate the same.

10. Now, the learned counsel for the petitioner produced a certificate issued by ITS Doors Pvt. Ltd, stating that the petitioner is drawing salary of Rs.10,500/- from the month of October, 2019 onwards and thereafter he did not turn up for duty and he left their company.

11. Therefore, there is no proof to show whether the petitioner is working or not at present. However, the petitioner, being the husband of the first respondent and father of the second and third respondents, is duty bound to maintain his wife and children.

12. Considering the above facts and circumstances, this Court is inclined to reduce the monthly maintenance payable by the petitioner to the respondents. The petitioner is directed to pay a sum of Rs.5000/- to the first respondent as monthly maintenance and Rs.2500/-, each, to the second and third respondents



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herein as monthly maintenance. If the petitioner fails to pay the arrears of the maintenance as per the above terms, the respondents are at liberty to take appropriate action as against the petitioner under the manner known to law to execute the order.

13. Accordingly, this Criminal Revision case is partly allowed. Consequently, connected miscellaneous petition is closed.

10.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order

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G.K.ILANTHIRAIYAN, J

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To

The III Additional Principal Judge,
Family Court, Chennai.

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