



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.246 of 2020

and

Crl.M.P.No.1786 of 2020

L.Sekar

... Petitioner

Vs.

S.Rukku

... Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to call for the records pertaining to the order dated 29.11.2019 in MC.No.15 of 2016 passed by the learned Judicial Magistrate, Ambattur, examine the legality the propriety and correctness of the service and set aside the said order.

For Petitioner : No appearance

For Respondent : No appearance



ORDER

This Criminal Revision Case has been filed seeking to set aside the order in MC.No.15 of 2016 passed by the learned Judicial Magistrate, Ambattur.

2. The petitioner is the husband and respondent herein is the wife. The respondent/wife filed a case for maintenance in M.C.No.15 of 2016 on the file of the Judicial Magistrate, Ambattur. The respondent is seeking a sum of Rs.16,016/- as maintenance for herself and children. The learned Judicial Magistrate after the enquiry ordered the petitioner herein to pay a sum of Rs.15,000/- as maintenance to the respondent herein.

3. Challenging the said order, the petitioner/husband filed a Revision before this Court.

4. When the matter came up on 07.12.2022, there was no representation for both sides. Therefore, this case was adjourned today, under the caption 'for disposal'.



5. Today when the matter is take up, neither the parties nor their counsel appeared. This matter is related to the maintenance to the wife and children, therefore, this Court is inclined to dispose the Revision on merits, despite no representation on either sides.

6. According to the petitioner, the respondent/wife left her matrimonial home voluntarily without any valid reason. The petitioner took care of all the educational expenses as well as other expenses for his children. He was working as a foremen in TNEB and earning a sum of Rs.18,000/- per month. Whereas, the respondent/wife is having sufficient means to maintain herself. She is running a beauty parlour, out of which she is earning sufficient income. Hence, the petitioner need not maintain the respondent and the respondent is not entitled for maintenance. However, the learned trial Judge failed to consider the same and ordered to pay a sum of Rs.15,000/-, as if the petitioner is working as an Assistant Engineer in TNEB and earning a remuneration of Rs.40,000/-. Therefore, the order passed by the learned Judicial Magistrate, Ambattur is unreasonable and liable to be set aside.

7. According to the respondent/wife, as per the counter affidavit filed



by her, it is stated that she came away from the matrimonial home along with her children. She is unemployed and she is not earning any money. Therefore, she depends upon the income of the petitioner herein. When the petitioner joined TNEB, he was a foreman, but now he has been promoted as Assistant Engineer and getting a remuneration of Rs.50,000/- Since the respondent came out of the matrimonial home due to the harassment and cruelty, she is now suffering financially without any source of income for herself and her children. Therefore, she filed a petition for maintenance. However, the trial Court ordered only a sum of Rs.15,000/- which is very low and she is not able to meet the expenses of herself and her children.

8. Since there is no representation for both parties, perused the materials filed by the petitioner herein and counter filed by the respondent, before the learned Magistrate and all the available records.

9. The respondent, who is the wife of the petitioner filed a maintenance case before the learned Judicial Magistrate seeking monthly maintenance of Rs.16,600/- for herself and her children. The relationship between the parties is not disputed. The petitioner admitted that he is working as a permanent



employee in TNEB. Though the respondent herein stated that the petitioner is working as Engineer, but the petitioner denied that he is not working in TNEB as Engineer. Therefore, it is clear that the petitioner is working in TNEB. The petitioner has not filed any documents to show his designation on the date of filing of the complaint. Though the petitioner stated that he is working as foremen and earning a salary of Rs.18,000/-, he has not proved the same by producing documents such as pay slip, ID card etc. Once he admitted that he is a permanent employee of TNEB and not produced any documents to prove the salary as alleged by him, then the trial Court has rightly drawn an adverse inference. If the petitioner herein filed any document to show that he is earning a monthly income of Rs.18,000/-, then the trial Court would have considered it and not drawn adverse inference to that effect.

10. One of the defence taken by the petitioner is that the children have not been shown as parties to the proceedings. It is admitted that the petitioner herein is the husband and father. The respondent herein is the wife and mother. Even the names of the children is not mentioned in the cause title as parties, the mother has filed the maintenance case for herself and for her



children. The petitioner stated that he has paid the educational expenses and other additional expenses. However, the respondent is living separately along with her children without any means to support herself and her children.

11. Though the petitioner stated that respondent/wife is running a beauty parlour and she has means to meet out her expenses as well as her children expenses, however, the petitioner has not produced any documents or any witnesses to prove that the respondent/wife is running a beauty parlour and out of which, she is earning sufficient income and therefore, she is not entitled to get any maintenance.

12. Therefore, considering the facts and circumstances, the petitioner has not proved that either the respondent/wife left the matrimonial home without any reason on her own volition or there was a mutual consent between them or the respondent was living adultery. It is evident that the petitioner is a man of means and he is liable to maintain his wife and children. Under Section 125 Cr.P.C., the wife who is unable to maintain herself is entitled for maintenance if she proves that the husband neglected or refused to maintain her inspite of having sufficient means provided the wife should not be living in adultery or obtained divorce by mutual consent or left the



matrimonial home without any reason otherwise after getting divorce she got remarried with some other person. Other than that there is no other reason for disqualifying the wife from getting maintenance. The petitioner has not substantiated any of the above mentioned disqualification. Therefore, the wife is entitled for the maintenance.

13. Further, the relationship between the parties is not in dispute; the paternity of the children is also not disputed; both the petitioner and the respondent are living separately which is also not in dispute. Under these circumstances, this Courts does not find any perversity in the order passed by the learned Magistrate and there is no prima facie ground to admit the revision.

14. Since the petitioner has not proved the proviso under Section 125 of CrPC and the petitioner is also not able to prove that the respondent is earning and she is having sufficient income to maintain herself, this Court finds that the respondent is the wife and she is living with her children and she is not able to maintain herself. Since the petitioner is working in TNEB, he is liable to maintain the wife and his children. The petitioner has not



produced any documents to show his employment and salary. Therefore, this Court finds that there is no perversity in the order passed by the learned Magistrate that the petitioner herein has to pay Rs.15,000/- as maintenance to the respondent herein. There is no merits in this revision case and this Revision is liable to be dismissed.

15. The petitioner is directed to pay the entire arrears of amount from the date of filing of the maintenance case till today, within a period of one month from the date of receipt of copy of this order, failing which the learned Magistrate is directed to issue warrant to the petitioner without insisting any formal application from the respondent and children.

16. Accordingly, this Criminal Revision is dismissed and the order passed by the learned Judicial Magistrate, Ambattur is hereby confirmed. Consequently, the connected Miscellaneous Petition is closed.

15.12.2022

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Crl.RC.No.246 of 2



To

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The Judicial Magistrate,
Ambattur.



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P.VELMURUGAN,J.

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