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Crl.R.C.No.435 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.435 of 2018

Hemanathan @ Hemkumar, aged 30 years,
S/o.Rajendran,
No.76, Ambal Nagar,
Thiruninravur,
Chennai – 602 024.

... Petitioner

Vs.

1.S.Mahalakshmi @ S.Minu

2.H.Suriya Kumar (Minor),
Rep. by his guardian, mother, 1st respondent.
S/o.R.Hemanatha @ Hemkumar,
Both are residing at
No.19, Ammiappan Lane,
Royapettah,
Chennai – 600 014.

... Respondents

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed in M.C.No.124 of 2016, dated 01.02.2018 on the file of the VI Additional Family Court, Chennai and dismiss the same.

For Petitioner : Mrs.Sudharshana Sunder

For Respondents : Mr.V.K.Sathiamurthy



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ORDER

This Criminal Original Petition has been filed to set aside the order, dated 01.02.2018 in M.C.No.124 of 2016 passed by the learned VI Additional Principal Judge, Chennai.

2.The learned counsel for the petitioner submitted that marriage between the petitioner and the 1st respondent solemnized on 09.12.2013 at Selvam Mahal Thirumana Mandapam, Chrompet, Chennai and the marriage was an arranged marriage. Out of their wedlock, a male child namely Suriyakumar was born to them on 07.10.2014. The 1st respondent is a B.Tech., and M.B.A., graduate and the petitioner is B.E., M.C.A., I.C.W.A., graduate. The petitioner previously worked at TATA Consultancy Services and now, he is working as Branch Manager, Tech Mahendra getting salary for a sum of Rs.1,00,000/- (Rupees one lakh only). His mother is LIC agent and his father is a retired postmaster. After the marriage, the petitioner along with the 1st respondent was residing at No.76, Ambal Nagar, Thiruninravur till March 2014. During that period, misunderstanding arose between them and the 1st respondent was forced out from the matrimonial home and from May 2014, they have been living separately. The allegation against the petitioner is that the petitioner used to compare his wife/1st respondent with her mother and



she was continuously abused and harassed by him. The 1st respondent was keeping quite initially and finally, unable to bear any further, during the month of May 2014, she left the matrimonial home. It was further alleged that during the matrimonial life, the 1st respondent was not provided with sufficient food and proper health care. After the birth of male child Suriyakumar/2nd respondent, when the 1st respondent had come to the petitioner's house on 20.01.2016 to join the matrimonial home, she was not allowed to enter into the house demanding Rs.5,00,000/-. Thereafter, she returned back to her parents house and started to live with them and filed a maintenance case in M.C.No.124 of 2016 before the learned VI Additional Principal Judge, Chennai.

3.The learned counsel for the petitioner further submitted that the learned Judge failed to consider it was the 1st respondent, who on her own deserted the petitioner and joined her parents. The 1st respondent lodged a complaint to the Inspector of Police, All Women Police Station, Avadi. Though on the complaint C.S.R.No.151 of 2016 was assigned, no action was taken. Since no action by the Police, the 1st respondent filed a direction petition before this Court in Crl.O.P.No.10004 of 2016, wherein this Court, by



order, dated 06.06.2016 closed the petition finding that it is a matrimonial dispute and the 1st respondent's main grievance appears to be to set up a independent family away from the petitioner's parents.

4.He further submitted that the learned VI Additional Principal Judge, Chennai, by order, dated 01.02.2018 directed the petitioner to pay a sum of Rs.10,000/- per month to his wife/1st respondent and Rs.15,000/- to his son/2nd respondent towards maintenance, against which, the present criminal revision has been filed. The petitioner filed H.M.O.P.No.565 of 2016 for restitution of conjugal rights and obtained an order against the respondents. During the pendency of the above revision, mediation was attempted and the issues between them amicably settled between the petitioner and the respondents.

5.The learned counsel for the respondents submitted that after the marriage, the petitioner forcibly sent out the respondents from the matrimonial home. Thereafter, the 1st respondent filed a maintenance case in M.C.No.124 of 2016 before the learned VI Additional Principal Judge, Chennai. The learned Judge, on the evidence and materials, ordered maintenance to the respondents on 01.02.2018, against which, the petitioner has filed the present



criminal revision. During pendency of the above revision, there was mediation talk between the petitioner and the respondents to settle the issues and thereby, they compromised the issues amicably. In pursuant to the compromise, a Memorandum of Understanding, dated 09.03.2022 entered between the parties. As per the Memorandum of Understanding, dated 09.03.2022, the parties agreed to file Divorce Petition by mutual consent and the same was filed in H.M.O.P.No.1063 of 2022 on 30.03.2022 under Section 13(B) of the Hindu Marriage Act before the learned VI Additional Principal Judge, Chennai, wherein evidence recorded and the petition is posted for order on 05.04.2022.

6.This Court considered the rival submissions and perused the materials available on record.

7.The Memorandum of Understanding, dated 09.03.2022 filed before this Court. This Court questioned both the petitioner and the 1st respondent about the compromise and satisfied that the Memorandum of Understanding, dated 09.03.2022 was without any compulsion or coercion.

8.It is seen that admittedly, the petitioner and the respondents have been



living separately since 2016. The minor Suriyakumar/2nd respondent from his birth, is in care with his mother/1st respondent. As per the Memorandum of Understanding, dated 09.03.2022, it is agreed that though the petitioner obtained order of restitution of conjugal rights in H.M.O.P.No.565 of 2016, he will not give effect to the same. Further, the custody of minor Suriyakumar/2nd respondent would continue to be with the 1st respondent without any hindrance or any disturbance from the petitioner and his family members. Both the petitioner and the 1st respondent assured and undertook that they will not misuse or exploit the messages, whatsapp and other documents relating to the marriage at any point of time. The petitioner shall meet the minor Suriyakumar/2nd respondent at Arulmigu Karaneeswarar Temple, Saidapet, Chennai between 11.00 a.m., and 12.00 noon on every third Sunday of the month, on prior intimation. The said visit would no way affect the future prospects of the 2nd respondent and the visit is with willingness of the 2nd respondent. Pursuant to MOU, dated 09.03.2022, it is confirmed that the petitioner and the respondent exchanged their personal belongings among themselves. The petitioner agreed to pay a sum of Rs.55,00,000/- as permanent alimony to the respondents. The demand draft drawn on HDFC bank, Pattabiram, Chennai for a sum of Rs.52,50,000/- in favour of the 1st



respondent was handed over to the 1st respondent and the same was acknowledged by her, a photostat copy produced before this Court. Earlier, a sum of Rs.5,00,000/- was deposited by the petitioner before the learned VI Additional Principal Judge, Chennai in M.C.No.124 of 2016. Out of Rs.5,00,000/- (Rupees five lakh only), the amount of Rs.2,50,000/- (Rupees two lakh and fifty thousand only) was withdrawn by the 1st respondent and now, a balance amount of Rs.2,50,000/- (Rupees two lakh and fifty thousand only) available. Giving credit to this Rs.2,50,000/- (Rupees two lakh and fifty thousand only), total amount of Rs.55,00,000/- is given to the petitioner, which is agreeable and accepted by the respondents.

9.Considering the submissions and on perusal of the materials, this Court finds that the issue is a matrimonial dispute between the parties. Now, the petitioner and the respondents arrived at a compromise with terms. All the terms and conditions are complied with. As per MOU, dated 09.03.2022, the parties filed a divorce petition by mutual consent under Section 13(B) of the Hindu Marriage Act before the learned VI Additional Principal Judge, Chennai in H.M.O.P.No.1063 of 2022, wherein evidence recorded and the petition is posted for order on 05.04.2022.



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10. In view of the present development by compromise and permanent alimony paid, the continuation of maintenance case in M.C.No.124 of 2016 is no more required. Hence, the order, dated 01.02.2018 in M.C.No.124 of 2016 passed by the learned VI Additional Principal Judge, Chennai is hereby set aside and this Criminal Revision is allowed. The 1st respondent shall withdraw the balance Rs.2,50,000/- (Rupees two lakh fifty thousand only) in M.C.No.124 of 2016 on filing relevant petition, without any further delay. Notice to the petitioner/husband is dispensed with and not required and he has no objection.

11. This Court appreciates the earnest steps taken by the learned counsel for the parties in finding a solution, by reasoning out with their clients and arriving at a compromise. But for their sincere efforts, this Court feels that it would have been difficult to resolve the issue and to have a permanent solution.

12. This Court places fond hope on the petitioner and the 1st respondent



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not to deprive and deny the minor son/2nd respondent of their parental love and affection. The petitioner not to restrict his affection and benevolence on his son.

30.03.2022

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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To

The VI Additional Principal Court,
Chennai.



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M.NIRMAL KUMAR, J.

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