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CrI. O.P. No.7998 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30/6/2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. No.7998 of 2022

1. D. Sangeetha

2. Vamsiga

...

Petitioners

Vs

V. Devaraj

...

Respondent

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order CrI.R.P.1 of 2022, dated 1/12/2021 and consequently, to direct the respondent to pay the interim maintenance of Rs.15,000/- to the first petitioner wife and Rs.10,000/- to the second petitioner child as prayed to the trial Court to secure the ends of justice.

For Petitioner

...

Ms.P.Kavitha

For Respondent

...

No appearance



ORDER

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This Criminal Original Petition has been filed to set aside the order, dated 1/12/2021, made in Crl.R.P.1 of 2022, and consequently, direct the respondent to pay the interim maintenance of Rs.15,000/- to the first petitioner wife and Rs.10,000/- to the second petitioner child.

2. Brief facts of the case are as follows:-

The marriage between the first petitioner and respondent was solemnized, on 31/3/2013, at Guduvancherry and a child was born, on 4/4/2014. Due to some misunderstanding, the first petitioner deserted the husband and left the matrimonial home, on her own volition. The respondent filed a petition for restitution of conjugal rights in F.C.O.P.No.121 of 2015 and the same was allowed on 12/5/2015, based on the mediation report.

3. Thereafter, the respondent had filed a Divorce Petition in F.C.O.P.No.9 of 2016 in Chengalpattu Family Court. After the Undertaking deed, dated 19/2/2016, again in the year 2017, the first petitioner deserted the matrimonial home. The respondent filed H.M.O.P.No.94 of 2017 in



Chengalpattu and the first petitioner had filed restitution of conjugal rights in H.M.O.P.No.95 of 2017, at Ponneri and GWOP No.234 of 2017. On the basis of compromise made by the elders, both the cases, viz., H.M.O.P.Nos.94 and 95 of 2017 were dismissed. Thereafter, the family members of the first petitioner assaulted the respondent. Hence, complaint was given in Minjur Police Station, in C.S.R.No.376 of 2018, dated 29/7/2018. M.C.No.11 of 2018 has been filed for maintenance, under Section 125 of the Code of Criminal Procedure, by the first petitioner. The learned Judicial Magistrate No.II, Ponneri, allowed the petition and granted a sum of Rs.6,000/- towards interim maintenance.

4. Being aggrieved, the respondent had filed Criminal Revision Petition No.1 of 2021, to set aside the order of the learned Judicial Magistrate No.II, Ponneri, in C.M.P.No.1542 of 2019 in M.C.No.11 of 2018, dated 13/3/2020, as against the respondent, who has been directed to pay interim maintenance of Rs.4,000/- to the first petitioner and Rs.2,000/- to the minor child, till the disposal of main M.C.



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5. Vide, order dated 1/12/2021, the learned IV Additional District and Sessions Judge, Tiruvallur, Ponneri, partly allowed the petition and set aside the interim maintenance order granted in favour of the first petitioner and confirmed the interim maintenance order of Rs.2,000/- granted in favour of the second petitioner, payable by the respondent, on or before 10th of every English Calendar month from the date of petitioner viz., C.M.P.No.1542 of 2019 till the disposal of main M.C.

6. Being aggrieved, the petitioners have come up with the instant Criminal Original Petition, praying for the relief as stated supra.

7. Heard Mr.S.Jeyakumar, learned counsel for the petitioners and there is no appearance for the respondent.

8. The learned counsel appearing for the petitioners submitted that by an order dated 1/12/2021, the learned IV Additional District and Sessions Judge, Tiruvallur, without considering the merits of the petitioner's claim, revised the maintenance amount ordered by the learned Judicial Magistrate. The Appellate



Court negated the claim of the first petitioner and directed the respondent to pay Rs.2,000/- p.m., to the second petitioner.

9. Despite notice served, the respondent has not entered appearance.

10. Though several contention has been put forth by the petitioners, it is an admitted fact that the respondent was drawing a salary of Rs.12,500/- and salary certificate was also exhibited before the trial Court. The first petitioner has deserted the respondent and left matrimonial home, cannot be a justifiable reason, for denial of interim maintenance.

11. Therefore, without going into the merits, it has to be decided on the basis of the evidence adduced by both sides, taking note of the certificate filed before the learned Judicial Magistrate. Considering the cost of living, the respondent is directed to pay a sum of Rs.2,500/- (Rupees Two thousand and five hundred only) as interim maintenance to the first petitioner and Rs.2,000/- (Rupees Two thousand only) to the minor child.



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12. Accordingly, this Criminal Original Petition is partly allowed and the order dated 1/12/2021, passed by the learned IV Additional District and Sessions Judge, Tiruvallur, Ponneri, is modified, as above. The learned trial Judge shall decide the main case on the basis of the evidence adduced on that aspect.

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Index: Yes/No

Internet: Yes

Speaking/Non-speaking order

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