



Crl.O.P.No.10227 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.No.10227 of 2021 and
Crl.M.P.No.6191 of 2021

P.Prakash

... Petitioner

Vs.

1.P.Valarmathi

2.Rithesh

3.Ajay

(Respondents 2 & 3 are represented by
their mother P.Valarmathi)

...

Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to
call for the records pertaining to M.C.No.14 of 2020 on the file of the Judicial
Magistrate, Kumarapalayam and quash the same.

For Petitioner : Mr.P.Tamilavel

For Respondents : Mr.R.Vigneswaran for
Mr.M.Guruprasad



CrI.O.P.No.10227 of 2021

WEB COPY

ORDER

This Criminal Original Petition has been preferred to call for the records pertaining to M.C.No.14 of 2020 on the file of the Judicial Magistrate, Kumarapalayam and quash the same.

2. Heard Mr.P.Tamilavel, learned counsel for the petitioner and Mr.R.Vigneswaran, learned counsel for the respondents.

3. The case of the prosecution is that the petitioner and the first respondent got married in the year 2008 as per Hindu Rites and Customs. Out of the wedlock, they have two children viz., Rithish and Ajay. Due to matrimonial dispute, the petitioner filed FCOP No.404 of 2018 before the learned Family Court, Salem on the ground of adultery and cruelty. Subsequently, the first respondent came forward for settlement and a joint memo of settlement has been entered into between the parties and in view of that, the first respondent agreed to receive Rs.5,25,000/- towards permanent maintenance. In view of the same, the said FCOP was allowed and divorce was granted. Thereafter, the first respondent filed M.C.No.14 of 2020, claiming maintenance for her and her children. Aggrieved over the same, the petitioner



CrI.O.P.No.10227 of 2021

has filed this Criminal Original Petition.

WEB COPY

4. The learned counsel for the petitioner submitted that the marriage between the petitioner and the first respondent got dissolved as early as in the year 2019; despite he has filed a petition for dissolution of marriage on the ground of adultery and cruelty under Section 13(1)(i) and (i-a) of the Hindu Marriage Act, the parties had arrived at a compromise and in view of the settlement, a joint compromise memo was filed and in view of that, the order of dissolution of marriage was passed by mutual consent; the joint memo dated 22.04.2019, shall also form part of the order; in the joint memo of compromise, the first respondent had agreed to receive a sum of Rs.5,25,000/- as full quit towards maintenance and having received the said amount, the next year itself the first respondent had filed a petition for maintenance which is not maintainable.

5. The learned counsel for the respondents submitted that the petitioner is bound to maintain the minor respondents 2 & 3 who are in the custody of the first respondent; the petitioner does not take care of the needs of the children and he had married another person subsequent to the order of the



Family Court and living at his own will and pressure; even though in the joint memo filed during the divorce proceedings the wife has stated that she would not claim any maintenance, her claim for maintenance cannot be defeated and her entitlement for maintenance cannot be denied so long as she remains unmarried and unable to maintain herself. In support of the above contention, learned counsel for the respondents relied on the decision of the Bombay High Court held in the case of **Ramachandra Laxman Kamble Vs. Shobha Ramachandra Kamble and Anr.** He would draw the attention of this Court to paragraph No.19 which is extracted hereunder:

“19. In R.Rambilas Vs. Ms.Anita and Another, a learned Single Judge of the Andhra Pradesh High Court has held that a wife's claim for maintenance cannot be defeated by any agreement not to claim any maintenance. Even divorced wife is entitled to maintenance so long as she remains unmarried and unable to maintain herself. Mere divorce does not end right to maintenance. A clause in an agreement that wife shall not be entitled to claim maintenance from husband cannot be used in proceedings under Section 125 of Cr.P.C., since such clause is opposed to public policy and therefore, void under Section 23 of the Contract Act.”

6. The first respondent is the divorced wife of the petitioner. The second



CrI.O.P.No.10227 of 2021

and third respondents are the minor children born to the petitioner and the first respondent. The marriage between the petitioner and the first respondent got dissolved by virtue of the order of the Family Court, Salem, on 29.04.2019, made in FCOP.No.404 of 2018. Even though the petitioner had filed a petition for divorce on the ground of adultery and cruelty, later the parties entered into the settlement and they agreed to get divorce by mutual consent. During the course of the proceedings, a joint memo dated 22.04.2019 was filed, wherein, the first respondent had agreed to receive Rs.5,25,000/- as full quit towards maintenance. In the said joint memo, the first respondent has stated that she would not file any petition for maintenance either for herself or for the children. The first respondent can give such undertaking only for herself and she cannot bind the interest of the minor children who have a legal entitlement to be maintained by their parents immaterial of the subsistence of marriage between their parents.

7. The learned counsel for the respondents submitted that the first respondent is not able to meet out the needs and other requirements of the minor children and hence, an order should be passed against the petitioner for paying maintenance. But it is seen from the prayer made in the maintenance



CrI.O.P.No.10227 of 2021

case that the first respondent has claimed Rs.10,000/- per month towards herself and Rs.10,000/- per month towards the maintenance of each of the respondents 2 and 3. The first respondent can only claim maintenance for the minor children, the respondents 2 and 3 and she cannot claim any maintenance for her from the petitioner, in view of the one time lumpsum payment she received towards maintenance during the matrimonial proceedings pending between herself and the petitioner. However, the maintenance petition is maintainable as against the second and third respondents. It is upto the learned Judicial Magistrate, Kumarapalayam to consider the past payments and all other relevant circumstances while fixing the quantum of maintenance payable to the minor respondents 2 and 3.

8. The learned counsel for the respondents attracted the attention of this Court to the judgment of the Bombay High Court in the case of ***Ramachandra Laxman Kamble Vs. Shobha Ramachandra Kamble and Anr.*** The said judgment has to be seen in the context of its own facts. In the said case, it is seen that the decree was challenged by the wife on the ground of fraud. Further in the said case, the wife had waived her right to receive maintenance. But in the case in hand, the first respondent wife had received a sum of



CrI.O.P.No.10227 of 2021

Rs.5,25,000/- as lumpsum maintenance and hence it cannot be equated to waiver of maintenance. Only after receiving the lumpsum, the first respondent had undertaken that she would not claim any further maintenance in future. So, the first respondent is not entitled to claim any further maintenance without any extraneous reasons. However the second and third respondents who are minor children are bound to be maintained by their father who is the petitioner herein.

9. In view of the above stated reasons, this Criminal Original Petition is partly allowed and the maintenance proceedings in M.C.No.14 of 2020, pending on the file of the Judicial Magistrate, Kumarapalayam, is quashed as against the first respondent alone. In respect of the maintenance claim made on behalf of the respondents 2 and 3, the proceedings shall go on. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
Speaking / Non Speaking Order
gsk

28.09.2022



WEB COPY



Crl.O.P.No.10227 of 2021

R.N.MANJULA, J.

gsk

To
The Judicial Magistrate,
Kumarapalayam.

Crl.O.P.No.10227 of 2021 and
Crl.M.P.No.6191 of 2021

28.09.2022