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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.08.2021
PRONOUNCED ON : 12.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.640 of 2019

Suman Menon ...Appellant/ Petitioner
Vs.

1. G.Jayashree
2. Minor Devika Menon ...Respondents/ Respondents
(Represented by her Mother, 1st respondent)

The Criminal Appeal filed under Section 341 of Code of Criminal Procedure seeking to set aside the order dated 11.12.2018 passed by the learned Additional Principal Judge, Coimbatore, Principal Judge (FAC), Principal Family Court, Coimbatore, in C.M.P.No.168 of 2017 in M.C.No.103 of 2015.

For Appellant : Mr.L.Mouli

For Respondents: M/s.Udaya P.S.Menon

JUDGMENT

This criminal appeal has been filed against the order dated 11.12.2018 passed by the learned Additional Principal Judge, Coimbatore, Principal Judge (FAC), Principal Family Court, Coimbatore, in C.M.P.No.168 of 2017 in M.C.No.103 of 2015.

2 The appellant is husband, 1st respondent is wife and 2nd respondent is their minor daughter. Originally, the respondents filed maintenance case in M.C.No.103 of 2015 before the Principal Family Court, Coimbatore, seeking monthly maintenance of Rs.25,000/- for each of the respondents. Pending the above maintenance case, the respondents have filed a miscellaneous petition seeking interim maintenance. In the meantime, the appellant/husband has filed miscellaneous petition under Section 340 r/w 195 Cr.P.C. seeking to initiate an inquiry against the first respondent/wife under Section 340 Cr.P.C and to punish her for filing false particulars and false documents. The learned Judge, after hearing both the parties and after analysing the documents on record, by order dated 11.12.2018, dismissed the petition.



3 Challenging the said order of dismissal of petition filed by the appellant/husband under Section 340 r/w 195 Cr.P.C, present appeal has been filed.

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4 The learned counsel appearing for the appellant/husband would submit that the first respondent/wife filed the maintenance case against the appellant before the Family Court at Coimbatore and it is to be noted that no cause of action arose within the jurisdiction of the Court at Coimbatore. The first respondent/wife, in order to get territorial jurisdiction of the Family Court at Coimbatore, has filed false rental agreement, which was proved by the appellant/husband. Further, the first respondent/wife is not even entitled for claiming maintenance against the appellant/husband, since she is working as a Teacher in the Private School and getting monthly salary of Rs.13,500/-, suppressing the above fact, she has filed the maintenance case against the appellant/husband.

4.1 The learned counsel appearing for the appellant/husband would further submit that the first respondent/wife, only with a view to confer jurisdiction upon the Family Court at Coimbatore, suppressing the facts and creating fake and fabricated documents, has filed the maintenance case against the appellant/husband. The learned Judge, without appreciating the scope of Section 340 r/w 190 of Cr.P.C. dismissed the petition with non application of mind. Therefore, the order dated 11.12.2018, passed by the Principal Family Judge (FAC), Coimbatore, is liable to be set aside.

5 The learned counsel appearing for the respondents would submit that first respondent has not created any document for the purpose of filing the maintenance case before the Family Court, Coimbatore. The first respondent at paragraph No.XXVI in the petition in M.C.No.103 of 2015 has only stated that she is under the shelter of her aged parent and due to the continuous ill treatment by the appellant/husband, the first respondent unable to pursue anything in her home town and hence she came to Coimbatore for searching job for the livelihood and hence she claimed Rs.50,000/- p.m. to meet out the pre-school admission of the second respondent/daughter and their livelihood.

5.1 The learned Judge, has rightly appreciated both the petition and the counter filed by the first respondent/wife and found that the appellant is not entitled for the relief sought for in the petition filed under Section 340 r/w 190 Cr.P.c. and dismissed the petition, which does not call for any interference of this Court.



6 Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the material available on record and the order of the learned Principal Judge (FAC), Coimbatore.

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7 Admittedly the appellant is husband, first respondent is wife and 2nd respondent is their daughter. There was family dispute and the matrimonial proceedings are pending. The first respondent/wife has also filed maintenance case in M.C.No.103 of 2015 on the file of the Principal Family Judge, Coimbatore and the appellant/husband has filed counter in the maintenance case. During pendency of the above case, the appellant/husband invoking Section 340 Cr.P.C. regarding production of fabricated documents and prayed to punish the first respondent for the same. The learned Judge has dismissed the petition and against which, now the appellant/husband is before this court.

8 It is the main contention of the the appellant/husband that the first respondent/wife had been working in Horizon School, Ramanattukara, Kozhikode, Kerala, from 02.07.2014 till 12.06.2016 and the first respondent, being the School Teacher, could not have been present on 11.06.2015 to execute the rental agreement dated 11.06.2015 and therefore the said agreement is fake and fabricated one, since 11.06.2015 happened to be a working day for the first respondent and hence the rental agreement could not be a genuine one. He also contended that first respondent has made false oath that she is unemployed and she is under the shelter of her aged parent and she is unable to pursue anything from home town and the learned Judge, without considering above facts dismissed the petition.

9 As far as the contention regarding the filing of fabricated documents by the first respondent/wife is concerned, it is seen that the learned Judge has rightly made observation that the agreement was said to have been executed at Coimbatore and the permanent resident of the respondent is at Kerala and the distance between the first respondent's permanent resident and the alleged temporary address is only 180 to 200 kilometers. Even the date of execution of the alleged rental agreement i.e. 11.06.2016 is happened to be a working day, it is quite possible for the first respondent/wife to travel 200 kilometers after working hours and execute the rental agreement. Further, in the rental agreement, the permanent address and the temporary are clearly mentioned and as stated by the trial Judge, the distance between the two addresses is only 200 kilometers and is not far away and between Kozhikode and Coimbatore, there is National Highway and hence it is very easy for the respondent/wife to travel from Kozhikode to Coimbatore after working hours and execute the rental agreement. It is seen that the appellant/husband did not let in any evidence to show that the



first respondent/wife did not travel from Kozhikode to Coimbatore on the day of execution of the rental agreement. Therefore the contention of the learned counsel for the appellant regarding the fabricated document said to have been filed by the first respondent wife is rejected.

10 Coming to the other contention regarding the employment of the first respondent/wife, it is seen that in the petition in M.C.No.103 of 2015, the wife has not mentioned that she is unemployed and she has only stated that due to continuous ill treatment of the appellant/husband, she could not pursue anything in her home town and came to Coimbatore for her livelihood. Even as per the documents Ex.R1 to R5, income of the first respondent/wife is Rs.13,666/- p.m. only, whereas, the appellant/husband is working and earning Rs.75,000/- p.m. and therefore he is liable to pay the maintenance to his wife and son. A careful perusal of the petition filed in M.C.No.103 of 2015, would go to show that the first respondent/wife has not mentioned anything about her employment. Under such circumstance, it cannot be concluded that the first respondent/wife created the documents and made false oath before the Court below.

11 The trial Court has rightly appreciated both the petition filed under Section 340 r/w 190 Cr.P.C and the counter filed therein by the first respondent/wife and dismissed the petition. Section 340 of Cr.P.C is very clear that if the Court is of the opinion that it is expedient in the interest of justice that an enquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195 Cr.P.C.. In this case, after considering the materials, the learned trial Judge is of the opinion that the enquiry under Section 340 of Cr.P.C. is not necessary and hence dismissed the petition. This Court does not find any perversity or illegality in the order passed by the learned trial Judge. There is no merit in the appeal and the same is liable to be dismissed.

12 Accordingly, the criminal appeal shall stand dismissed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

The Additional Principal Judge, Coimbatore,
Principal Judge (FAC), Principal Family Court,
Coimbatore,

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The Section Officer,
Crl. Section
High Court, Madras.

+1cc to M/s.V.Vijayakumar, Advocate, S.R.No.2613

+1cc to M/s.L.Mouli, Advocate, S.R.No.2586

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JP-II(CO)
SB(14/02/2022)