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Crl.O.P No.14650 of 20__

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2022

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.14650 of 2021

and

Crl.M.P No.7946 of 2021

Dr.SelvaGanesan @ Madhavan

... Petitioner

Vs.

Subhalakshmi

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to set aside the order dated 19.11.2020 passed in Criminal Revision Petition No.9 of 2019, on the file of the Additional District Court, Mayiladuthurai reversing the order dated 21.01.2019 passed in M.C No.10 of 2016 on the file of the Judicial Magistrate No.I, Mayiladuthurai.

For Petitioner : Mr.Swami Subramanian

For Respondent : Mr.R.Sivakumar

For M/s.K.M.Vijayan Associates



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ORDER

This Criminal Original Petition has been preferred, seeking to set aside the order of the learned Additional District Judge, Fast Track Mahila Court, Nagapattinam, (FAC) Additional District Court, Mayiladuthurai made in Crl.R.C No.09 of 2019 dated 19.11.2020.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The petitioner is the husband against whom, an order to pay a maintenance of Rs.15,000/- per month in favour of the respondent has been ordered.

4. The learned counsel for the petitioner submitted that the marriage between the petitioner and the respondent had taken place on 04.09.2013 and thereafter, the respondent lived only for 15 days with the petitioner and she deserted the petitioner claiming maintenance; since the respondent had separated the petitioner on her own volition, the respondent is not entitled to



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any maintenance as claimed by her; further, the amount of maintenance i.e fixed at Rs.15,000/- per month is also too high and the petitioner is getting a take home pay of Rs.25,000/- only; hence, the order of the Additional District Court, Mayiladuthurai made in Crl.R.C No.09 of 2019 dated 19.11.2020 should be set aside.

5. The learned counsel for the respondent submitted that the respondent had filed a petition for restitution of conjugal rights and the petitioner had filed a petition for divorce; so, it is not correct on the part of the petitioner to state that the respondent is not willing to live with the petitioner; the maintenance amount fixed at Rs.15,000/- is very reasonable and hence the order should be confirmed.

6. The fact that the petitioner and the respondent got married on 04.09.2013 is not denied. However, it is claimed by the petitioner that the respondent had deserted him on her own volition due to some misunderstanding. But, the respondent has stated that the dispute between the petitioner and the respondent is due to dowry demand made by the petitioner and the petitioner refused to come to the respondent's house even



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when the respondent's brother invited him for the first Diwali. It is alleged by the respondent that the petitioner himself continues to pay Rs.2,00,000/- in cash and 15 sovereigns of gold jewels for restoring his relationship with the respondent. The marital dispute which led to separation and all other allegations are matters of relevance only in the matrimonial proceedings filed by the petitioner and the respondent.

7. So far in this petition is concerned, it is a claim for maintenance. It is not the contention of the petitioner that the respondent is working elsewhere and she has got sufficient income of her own to maintain herself. The petitioner has not given any residential accommodation to the respondent, even though they are living separately. Until the larger issues between the couples are decided in the matrimonial proceedings, the petitioner, who is the husband of the respondent is duty bound to maintain the respondent. It is not in dispute that the petitioner is working as a Siddha Doctor in the Government Hospital and he is earning a fixed salary. Apart from that, he has a private clinic and said to be earning money.

8. An amount of Rs.15,000/- i.e., fixed to be payable to the



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respondent seems to be reasonable and compatible to the earning capability of the petitioner. However, the learned counsel for the petitioner submitted that even during the matrimonial proceedings, by way of an interim maintenance he is paying Rs.10,000/- per month. If the petitioner had been paying the said amount of Rs.10,000/- that can be set off against the maintenance amount now ordered and the parties are at liberty to recover the balance through appropriate proceedings.

9. With the above observation, this Criminal Original Petition is dismissed and the order of the Additional District Court, Mayiladuthurai made in Crl.R.C No.09 of 2019 dated 19.11.2020 is confirmed. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes / No
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To

1. The Additional District Court, Mayiladuthurai



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