



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.15777 of 2021 and
Crl.M.P.Nos.8596 & 8597 of 2021

K.N.Sathish Kumar

...Petitioner/ Respondent

-Vs-

1.Uma Maheswari

2.Minor S.Nirubashiri

3.Minor S.Srinivasan

(Petitioners 2 & 3 are represented by their
Mother & Natural Guardian

Uma Maheswari, 1st respondent all are
residing at No.530 Trichy Road,
Siganallur, Coimbatore - 641 005).

..Respondents/ Petitioners

Prayer : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, praying to call for the entire records in pursuant to M.C.No.52 of 2020 on the file of learned Additional Family Court at Coimbatore, Coimbatore District and quash the same.

For Petitioner : Mr.M.Sathish Kumar

For Respondents : Mr.R.Lakshmi Narayanan

O R D E R

This Criminal Original Petition has been filed to call for the entire records in M.C.No.52 of 2020 on the file of learned Additional Family Court at Coimbatore, Coimbatore District and quash the same.

2. This petition has been filed by the husband seeking to quash the maintenance case filed by his wife and children. For brevity, the parties are referred to as "husband", "wife" and "Children".

3. The brief facts of the case, wife and children have filed M.C.No.52/2020 on the file of the learned Additional Family Court, Coimbatore seeking maintenance of Rs.20,000/- for the wife and Rs.15,000/- for each children. The wife had stated that the marriage between herself and her husband was solemnized



on 07.03.2011 at Coimbatore, according to Hindu Rites and customs. It is the further contention that at the time of marriage, she was provided with 170 sovereigns of gold, 2 1/2 kgs of silver articles and a Ford car worth Rs.10lakhs along with house hold articles. The parents of the wife had also provided 15 sovereigns of gold to the husband. The first child is a female child born on 23.05.2012 and the second child is a male child born on 28.08.2014.

4. For business betterment, the husband had pledged the jewels of his wife and had raised loan to a tune of Rs.1,80,000/-. The husband has neither returned the money nor the jewels. Further, the husband had also raised funds to the tune of Rs.1,45,480/- through Margadarasi Chit Funds, for which, the wife's father stood as witness. During the year 2015, the husband met with an accident and was admitted in the hospital for treatment, the entire medical expenses were borne by the wife's father.

5. Thereafter, the husband had committed cruelty and had driven out the wife and children out of the matrimonial home. Since, the wife and her children were unable to maintain themselves, they had filed the petition seeking for maintenance.

6. The husband had filed the counter before the Family Court. He had stated that the wife along with children had left the matrimonial home in the year 2013 and that he had met with an accident on 15.05.2015 at Chitoor and sustained grievous injuries and the wife brought him to Coimbatore for treatment. He had further stated that he had lost his physical and mental stability and he is under medical treatment and he is also taking Ayurvedic treatment for physiotherapy which costs Rs.600/- per day.

7. Whiles, challenging the pending proceedings in MC.No.52 of 2020 on the file of Additional Family Court, Coimbatore, the petitioner/husband had filed the present criminal original petition to quash the proceedings. In the quash petition, the petitioner has raised the following grounds :-

(i) During the year 2013 the first respondent/wife had left the matrimonial home without informing him.

(ii) he met with an accident on 15.05.2015 and he was grievously injured and he lost his physical and mental stability. The first respondent/wife has failed to discharge her duty as dutiful wife and

(iii) The petitioner is still taking treatment at CMC Hospital at Vellore and he is also taking Ayurvedic treatment for physiotherapy which costs Rs.600/- per day.

(iv) A Civil Assistant Surgeon Dr.B.Subramanyam had given an opinion on 12.08.2021 that the petitioner is not physically and



mentally fit and advised to avoid long travel.

(v) The petitioner is presently residing at Chittoor and it is very much difficult for him to travel to Coimbatore which is 550kms away.

(vi) The recent scan report dated 11.11.2020 was observed that the petitioner was affected with chronic infarct, gliosis etc and since he is of unsound mind, he is incapable of making his defence and thereby the case should be tried as per Section 329 Cr.PC.

8. The learned counsel for the petitioner would submit that the respondent/wife had left the matrimonial house without any sufficient cause and she had failed to discharge her duty as dutiful wife. Further, the petitioner had met with an accident on 15.05.2015 and he has been grievously injured and he has lost his physical and mental stability and still now the petitioner is in medical treatment. Further, the Civil Assistant Surgeon of Area Hospital, Palamaner, Andhra Pradesh had given the opinion that the petitioner should not travel for long distance. He would further submit that the petitioner after the accident is not physically and mentally stable and thereby he is incapable of making his defence and the trial Court has failed to follow the procedure under Section 329 of Cr.PC., thereby he would seek to quash the proceedings.

9. Per contra, the learned counsel appearing for the respondent/wife would submit that the petitioner was admitted in the hospital on 27.05.2014 and discharged on 02.06.2014. The entire expenses were borne by the father of the respondent/wife, thereafter the petitioner had deserted his wife and children. The respondent/wife and children are unable to take care of themselves. The petitioner has engaged a counsel and appeared before this Court and it will not be difficult for him to defend his case before the Family Court. The husband had been evading to maintain his wife and children and further the grounds raised by the petitioner are factual in nature and could be tested only during trial before the Family Court. He would further submit that based on the pendency of this criminal original petition, the petitioner is evading to appear before the Family Court and thereby he would seek for dismissal of the petition.

10. Heard the counsel on either side and perused the materials available on record.

11. The grounds raised by the petitioner/husband is factual in nature and no legal ground had been raised to quash the proceedings. The ground raised can be decided only after full fledged trial before the concerned Court which deals with the maintenance case.



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12. In view of the above, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

jas/tsh

To

The Additional Family Court, Coimbatore.

+1cc to Mr.R.Lakshmi Narayanan, Advocate, S.R.No.17343

Crl.O.P.No.15777 of 2021

AK (CO)
SB (04/04/2022)