



Crl.R.C.No.921 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.921 of 2021 and
Crl.M.P.No.12717 of 2021

S.Sivakumar

...Petitioner

-Vs-

K.Sasikala

...Respondent

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order dated 21.07.2020 passed by the learned Principal Sessions Judge, Salem, in Crl.A.No.227 of 2019 confirming the order dated 29.05.2019 passed by the learned Judicial Magistrate, Additional Mahila Court, Salem, in D.V.O.P.No.38 of 2014 and allow the above criminal revision.



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For Petitioner : Mr.J.Hariharan

For Respondent : Mr.T.L.Thirumalaisamy

ORDER

The petitioner is husband and the respondent is wife. Their marriage was solemnized on 06.06.2011 and out of the wedlock a girl baby was born and at the time of filing of Domestic Violence case, the baby was 1½ years old. Since the petitioner/husband along with his family members caused cruelty against the respondent/wife and she was driven out from the matrimonial home, the respondent/wife filed a petition against the petitioner/husband and the in-laws before the Protection Officer and the same went to the learned Judicial Magistrate, Additional Mahila Court, Salem, which was taken on file in D.V.O.P.No.38 of 2014. After enquiry, even though, the learned Magistrate dismissed the petition as against the in-laws, ordered maintenance at Rs.5000/- p.m. and also ordered return of jewells and sridhana articles. Against which, the petitioner/husband filed an appeal in C.A.No.227 of 2019 and the learned Principal Sessions Judge,



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Salem, by judgment dated 21.07.2020, dismissed the appeal confirming the order passed by the learned Magistrate, as against which, present revision has been filed by the petitioner/husband.

2 Learned counsel appearing for the petitioner/husband would submit that even though the learned Magistrate dismissed the petition as against the in-laws and rejected the other reliefs sought for by the respondent/wife, based on the very same materials, has granted maintenance and ordered return of 15 sovereigns of gold jewels, which is against principles of law. Further the respondent/wife examined the employer of the petitioner/husband as P.W.4, who has clearly deposed that the petitioner/husband, at the relevant point of time, was earning only Rs.7,000/- p.m. and the learned Magistrate without considering the evidence of P.W.4, has erroneously ordered maintenance of Rs.5000/- p.m. which is more than 50% of the income of the petitioner/husband. In fact, out of the monthly income of Rs.7000/-, it is very difficult for the petitioner to maintain himself and his parents. The learned Magistrate as well as the learned Principle Sessions Judge have failed to consider the monthly salary



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of the petitioner/husband and hence the order of maintenance at Rs.5000/- is exorbitant.

3 The learned counsel would further submit that even as per the evidence of P.W.2, at the time of marriage, the respondent's father was sick and he was taking treatment and they were facing financial crisis, while that being so, it is not possible for them to offer the jewels and sridhna articles as stated by the respondent/wife and they could not have paid the marriage expenses. Both the Courts below have failed to consider the above facts and erroneously ordered return of jewels and articles. Therefore the order of maintenance may be set aside or otherwise it may be reduced reasonably.

4 Per contra, the learned counsel appearing for the respondent/wife would submit that the respondent/wife was driven out from the matrimonial home. The petitioner/husband have immovable properties and the respondent/wife with the child is facing difficulties to run their life and hence both the Courts below have considered the facts and ordered maintenance, which is well founded and does not call for any interference.



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5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 It is seen that relationship of the parties and paternity of the child and also the fact that the petitioner and the respondent are living separately are admitted. Even though the respondent/wife filed petition under Section 12 of the Protection of Woman from Domestic Violence Act, 2005, after enquiry, the learned Magistrate ordered maintenance of Rs.5000/- to the respondent/wife and also return of jewels. A perusal of the entire materials reveal that the respondent/wife established that the petitioner/husband is a earning member that apart his parents also having properties. Therefore considering the fact that the respondent/wife and the child are living separately and the cost of living prevailing as on date, the order of maintenance of Rs.5000/- is not exorbitant and it is very reasonable. It is for the petitioner to look after the better job and since the petitioner/husband is not going for a job or earning lesser income is not the



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ground to reject the entitlement of the respondent/wife and to set aside the order of maintenance awarded by the Courts below.

7 This Court, while exercising revisional jurisdiction, cannot exercise power of the Appellate Court and it has no power to re-assess the evidence and substitute its views on findings of fact. Further, while deciding the revision, it can only see whether there is any perversity in appreciation of evidence by the Courts below.

8 As a dutiful father, legally as well as morally, the petitioner/husband has to maintain his wife and child until the wife is able to maintain herself or she remarried or the child attains majority or they are able to maintain themselves.

9 In view of the above, this Court does not find any merits in the revision and the revision is dismissed accordingly. Consequently connected miscellaneous petition is closed. The petitioner/husband is directed to pay the monthly maintenance as ordered by the learned Magistrate and also the



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arrears of maintenance within a period of two months from the date of receipt of a copy of this order, failing which, the respondent/wife is at liberty to move the Magistrate to execute the order.

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Index : Yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order

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To

1. The Principal Sessions Judge, Salem.
2. The Judicial Magistrate, Additional Mahila Court, Salem.



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P.VELMURUGAN, J.,
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