



Crl.O.P.No.29961 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.29961 of 2019

and

Crl.M.P.No.16175 of 2019

Velusamy

... Petitioner/ Respondent/
Respondent

-Vs.-

Devi

..Respondent/Petitioner/
Petitioner

Prayer :- Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to set aside the order dated 20.08.2019 passed in Crl.RC No.1 of 2019 on the file of the III Additional District and Sessions Court, Erode at Gobichettipalayam reversing the order dated 01.12.2018 passed in MC No.16 of 2013 on the file of the Judicial Magistrate Court No.1, Gobichettipalayam.

For Petitioner : Mr.K.Govi Gannnesan

For Respondent : Mr.N.Manokaran



WEB COPY



Crl.O.P.No.29961 of 2019

ORDER

The petitioner herein is the husband of the respondent. Alleging that she is unable to maintain herself, petition under Section 125 of Cr.PC was filed by the respondent and the same was taken on file by the learned Judicial Magistrate Court I, Gobichettipalayam in M.C.No.16 of 2013. After considering the petition and the counter, the learned Judicial Magistrate dismissed the maintenance petition on the ground that the respondent employed in a SICCO school as Servant maid and residing along with her sister in the house owned by her father, therefore, she can maintain herself and no order to pay maintenance by her husband (the petitioner herein) is required.

2. Being aggrieved by the said order, the respondent filed a revision before the III Additional District and Sessions Court, Erode. The Appellate Court taking note of the provision and the reasoning given by the Trial Court for dismissing the maintenance petition, reversed the order of dismissal taking note of the fact that the petitioner and the respondent were married and living together for 14 years and they got separated since there was no issue. The petitioner herein on the ground of infertility



Crl.O.P.No.29961 of 2019

had obtained divorce. In the panchayat, he has admitted to offer Rs.30,000/- as life time maintenance but till the maintenance petition was taken up for trial, he has not paid the money but married another lady by name Kaleeshwari and living with her. In the said circumstances to meet her livelihood, the respondent has taken up the job as servant maid and living under the care of her sister. Relying upon the judgement of the Hon'ble Supreme Court that for survival if the wife eke out the living by taking meanial work that cannot be considered as gainful employment to deprive maintenance. Therefore, ordered monthly maintenance of Rs.5,000 /- from the date of petition and the arrears to be paid within a month from the date of the order and future maintenance be paid on or before 5th of every month.

3. This Court on perusing the judgement of the Trial Court dismissing the maintenance petition and the judgement of the Lower Appellate Court reversing the finding of the trial court finds that in the claim petition, it is stated that the petitioner herein owns 1 ½ acres of agricultural land and having sufficient income whereas in the counter



Crl.O.P.No.29961 of 2019

WEB COPY

affidavit making severe allegation against the respondent, the petitioner herein has alleged that though he is ready to live with his wife it is the respondent herein has deserted him. From the record and admission made subsequent to the said deposition, the petitioner herein has initiated HMOP 43 of 2008 for dissolution of marriage and the same was dismissed. Against it, he preferred CMA No.73 of 2010 and the District Court, Erode, same was allowed and thereby dissolved the marriage held between the petitioner and the respondent on 23.02.1994.

4. In the said circumstances, the marriage was dissolved for not giving birth indicates that the petitioner herein want to get rid of the respondent for want of child and had dissolved the marriage. For the sake of contesting maintenace petition he has made a false averment that he is ready to live with his wife. This will not exonerate him from maintaining her citing her meager income as servant maid in a school which is neither maintained or sufficient to have a dignified meaniful living.

5. This Court finds that the order of the Lower Appellate Court is in accordance with law and facts. Hence, it has to be confirmed.



Crl.O.P.No.29961 of 2019

WEB COPY

Accordingly, this petition is dismissed. The order passed in Crl.RC No.01 of 2019 is confirmed. The petitioner herein is directed to pay the arrears within a period of four months in four equal monthly instalments and continue to pay the future monthly maintenance on or before every 5th of the month. Consequently, connected miscellaneous petitions is also closed.

26.09.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

rka

To

1. The III Additional District and Sessions Court,
Erode at Gobichettipalayam
2. The Judicial Magistrate Court No.1, Gobichettipalayam
3. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.O.P.No.29961 of 2019

Dr.G.JAYACHANDRAN.J.,

rka

Crl.O.P.No.29961 of 2019
and
Crl.M.P.No.16175 of 2019

26.09.2022