



Crl.RC.No.132 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.132 of 2020

and

Crl.M.P.No.912 of 2020

B.Jayaraman

... Petitioner

Vs.

Mahalakshmi

... Respondent

Prayer: Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to set aside the order dated 07.11.2019 passed by the Family Court, Chengalpattu in FCCMP No.189 of 2016.

For Petitioner : Mr.V.Vijayashankar

For Respondent : Mr.D.Ashok Kumar



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ORDER

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This Criminal Revision Case has been filed seeking to set aside the order dated 07.11.2019 passed by the Family Court, Chengalpattu, in FCCMP No.189 of 2016.

2. The petitioner and the respondent are husband and wife. The wife along with her son had filed a maintenance case initially in the year 1983 in M.C.No.17 of 1983 and got an order of maintenance of Rs.150/- towards the maintenance of wife and Rs.100/- towards the maintenance of her son on 01.10.1985. Subsequently, the wife filed petitions then and there for enhancement and lastly, she got an order on 07.11.2019 wherein, the Family Court, Chengalpattu, enhanced the maintenance amount to the wife from Rs.1,000 to Rs.5,000/- per month. Challenging the said order of enhancement, the husband has filed the present revision before this Court.

3. The learned counsel for the petitioner would submit that the petitioner was working in the Army and the marriage between the petitioner and the respondent was solemnised on 21.02.1980 and after the marriage,



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hardly 8 months only, the respondent was living with the petitioner and thereafter, she left from the matrimonial home and even after much efforts taken by the petitioner, she did not come back to the matrimonial home. Thereafter, initially the petitioner had filed a petition for divorce in HMOP No.14 of 1983 before the Principal District Court, Chengalpattu, and the same was dismissed by order dated 07.06.1996. Even thereafter, the respondent did not reunion the petitioner and continuously deserted from him. Subsequently, the petitioner filed appeal in CMA No.3 of 1997 before the Principal District Judge, Chengalpattu, and the same was allowed and decree of divorce was granted by order dated 17.11.1997 on the ground of desertion and that the appellate Court had also given a finding that the respondent deserted the petitioner wilfully and therefore, the petitioner is entitled to get decree of divorce. Subsequently, even though the respondent filed second appeal before this Court challenging the decree of divorce in CMSA No.6 of 1998, the same was dismissed for default and as on date, the order passed by the learned Principal District Judge, Chengalpattu, in CMA No.3 of 1997 dated 17.11.1997, is in force. Therefore, once the petitioner got a decree of divorce on the ground that the respondent left the



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matrimonial home wilfully on her own volition without any reason, then the respondent is not entitled to get any maintenance as per proviso under Section 125 Cr.P.C. However, the respondent filed petitions after petitions for enhancement of maintenance which was granted prior to the decree of divorce. The Family Court also enhanced the maintenance then and there upto Rs.1,000/- per month. Thereafter, in the year 2016, the respondent filed CMP No.189 of 2016 before the Family Court for further enhancement and the Family Court, considering the order passed in in CMA No.3 of 1997 dated 17.11.1997, enhanced the maintenance from Rs.1,000/- to Rs.5,000/-. Hence, the petitioner has filed the present revision Challenging the same now he has filed the revision.

4. The learned counsel for the respondent would submit that even after passing of the order by the Family Court, the petitioner has not paid the maintenance amount. Therefore, she filed a petition for enhancement of maintenance from Rs.1,000/- to Rs.10,000/- and the Family Court, considering the facts, enhanced the maintenance amount to Rs.5,000/- from Rs.1,000/- and there is no merit in the revision.



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5. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials on record.

6. Admittedly, the petitioner is aged about 73 years and the respondent is aged about 62 years. In the year of 1983 itself, the petitioner filed a petition for divorce on the ground of desertion and though it was dismissed, subsequently the appellate Court granted divorce on the ground of desertion in CMA No.3 of 1997 by order dated 17.11.1997 itself. Challenging the same, the respondent filed Second Appeal before this Court in CMSA No.6 of 1998. However, the appeal was dismissed for default and the same was neither restored nor modified. Therefore, as rightly pointed out by the counsel for the petitioner, as on date, the order in CMA Mo.3 of 1997 dated 17.11.1997 passed by the Principal District Judge, Chengalpattu, is in force.

7. The provision under Section 125 Cr.P.C. has given a bar to the wife from getting maintenance from the husband for the following reasons;



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1. If the wife is living in adultery or remarried or;
2. obtained divorce by mutual consent or;
3. left the matrimonial home voluntarily on her own volition without any valid reasons.

8. In this case, already divorce has been granted to the petitioner on the ground of desertion in CMA.3 of 1997 dated 17.11.1997 itself. Therefore, as per the provision under Section 125 Cr.P.C., the respondent is not entitled for any maintenance from the petitioner.

9. However, until the petition in FC CMP No.189 of 2016 is filed by the respondent, the petitioner was paying the maintenance amount of Rs.1,000/- to the respondent. He neither denied to pay the maintenance nor challenged the order of maintenance. Only after the order of enhancement of maintenance of Rs.5,000/- from Rs.1,000/-, the petitioner has challenged the maintenance order. As stated above, though the respondent is not entitled for any maintenance from the petitioner, since the petitioner has not challenged the order of maintenance of Rs.1,000/-, the petitioner is liable to pay the said amount of Rs.1,000/- towards maintenance to the respondent



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until the said order passed by the Judicial Magistrate is modified or
revoked.

10. With the above observations, this Criminal Revision Case is allowed. Consequently, connected Miscellaneous Petition is closed. The petitioner is at liberty to work out is remedy in the manner known to law.

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P.VELMURUGAN,J.

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To

The Family Court, Chengalpattu

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