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Crl.R.C.(MD).No.91 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2022

CORAM

**THE HONOURABLE MR. JUSTICE G.ILANGO VAN**

Crl.R.C.(MD).No.91 of 2022

Balasubramaniyan

.. Petitioner/Respondent

*Vs.*

Vennila

.. Respondent/Petitioner

**PRAYER:** This Civil Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order passed by the learned Sessions Judge, Family Court, Thanjavur in M.C.No. 09 of 2019, dated 20.11.2021 and set aside the same.

For Petitioner : Mr.K.M.Karunakaran

For Respondent : Mr.S.Ahamed Bhuhari Wasimaskar

**ORDER**

This criminal Revision Case has been filed against the order passed by the learned Sessions Judge, Family Court, Thanjavur in M.C.No.09 of 2019, dated 20.11.2021.



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2.The brief facts in brief:

The marriage between the parties took place on 25.05.2005 as per the customary rites. She was provided with sufficient jewels, seervarisai, etc., at the time of marriage. After the marriage they were living together in a joint family. A male child was born during November 2006. Again the wife became pregnant in the year 2008. She was taken to her parental home for treatment. A female child was born on 14.09.2008, none visited the child. In spite of repeated contact, the husband refused. He refused to see the child and the wife. Even after separation of several years, the husband has not taken any steps to have reunion. So far, no amount was also given towards maintenance and the husband is earning Rs.5,000/- per day by conducting tea shop. Claiming maintenance amount of Rs.15,000/- per month and apart from expenses for dresses, education, etc. the wife filed a petition.

3.That petition was opposed by the husband stating that only the wife refused to come to the matrimonial home after the delivery of the second child. The entire expenses were borne by him. He has not having any private income. Whereas, the wife is working in a hostel and earning Rs.25,000/-.



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4.At the conclusion of the enquiry, the trial Court found that the husband is earning sufficiently for the purpose of maintaining the family. During the course of evidence, the husband has stated that he has paid Rs.5,000/- towards maintenance of the family and that admission was taken into account by the trial Court for the purpose of finding his income capacity. So it ordered to pay Rs.5,000/- each to the wife and the children and apart from that he was also directed to pay Rs.40,000/- per month towards Medical expenses, dresses, education etc.

5.Now the learned counsel for the revision petitioner would submit that no sufficient proof was placed before the trial Court showing the income and income capacity of the revision petitioner. He is only working in a tea shop and also a heart patient. Without proper proof with regard to the fact that the first petitioner is working in a hostel and earning income, the above said order has been passed.

6.Reading of the order that was passed by the Family Court shows that because of the conduct on the part of the revision petitioner only, the wife was compelled to stay in the parental home. Whereas, it is the case of the revision petitioner that only the wife left the matrimonial home without



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any reason or permission. If it is so, the revision petitioner has ought to have taken proper steps to get the wife back to the matrimonial home. It appears that no such effort was made. As pointed out by the trial Court, the revision petitioner himself has admitted during the course of evidence that he was paying some sort of money to the wife and children. So on that ground the trial Court has found that there was sufficient reason for the wife to claim maintenance, since no proper care has been taken by the husband.

7.The learned counsel for the revision petitioner would rely upon his evidence to the effect that the tea shop is owned by his brother and he is working as an employee in the above said tea shop. Reading of the evidence of the revision petitioner during the cross examination shows that he was not at all taking proper care even though they were living together for about 10 years. He has stated that he was not aware of the correct age of the female child. This shows that he was not taking proper care of the wife and the children, who are residing in her parental home. Even he has stated that he was not aware of the fact that whether she become pregnant for second time, even after informing about the birth of child, he did not visit the child and taking care. So this part of his evidence shows the callous nature, by which, he treated the family. So this is sufficient enough for finding that he



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is bound to maintain the family.

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8. Even though there is no clear evidence to show the monthly income of the revision petitioner, payment of Rs.5,000/- per month towards the maintenance in the present day situation cannot be considered as excessive or luxurious in nature. But, apart from that the trial Court has awarded Rs.40,000 to be paid by the petitioner to the respondents towards dressings and other expenses. Since the maintenance amount has been ordered, the other expenses need not be included. So the payment of Rs.40,000/- per year towards other expenses can be ordered to be set aside.

9. In the result, this criminal revision case is **partly allowed**. The order passed by the trial Court awarding maintenance amount of Rs.5,000/- per month to each of the respondents herein, is hereby **confirmed** and so far as awarding of Rs.40,000/- per year with regard to other expenses is hereby **set aside**.

**10.11.2022**

Index : Yes / No  
Internet : Yes / No  
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- 1.The Sessions Judge, Family Court, Thanjavur.
- 2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.



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**G.ILANGO VAN,J.**

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