



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	01/12/2022
Date of Pronouncement	20/12/2022

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.RC(MD)No.105 of 2020

1.S.Bemila
2.Minor I.Jeedo Solomon
(2nd minor petitioner
represented by her
mother 1st petitioner
S.Bemila

: Petitioners/Respondents

Vs.

B.Israel

: Respondent/Petitioner

Prayer: Criminal Revision is filed under Section 397 and 401 of the Criminal Procedure Code, to call for records and set aside the order made in MC No.115 of 2017 dated 21/11/2019 on the file of the Family Court, Madurai, in so far as dismissing the claim of the maintenance to the 1st petitioner is concerned.

For Petitioners : Mr.V.P.Rajan

For Respondent : Mr.V.Sakthivel

O R D E R

This petition has been filed seeking to set aside the order passed by the trial court.



2.The facts in brief:-

The marriage between the respondent and the first petitioner took place on 14/09/2016 as per their religious customary rites. After the marriage, they were living together as separate family. Right from the marriage, according to wife, the husband was raising trouble with regard to conduct stating that she had sexual conduct with others. He was also not interested in child stating that they can adopt his sisters child. She was also assaulted frequently demanding Rs.3,00,000/- by pledging her jewels. They also obtained Rs.1,30,000/- of the loan amount. In spite of the above said circumstances, she got pregnant. And those period time she was also taken proper care. She was subjected to frequent sexual torture also. On 19/11/2017, she was driven out of the house. On 14/10/2017, she lodged a complaint with the Tallakulam All Women Police Station. The husband also filed a petition in HMOP No.63 of 2017 seeking divorce. Child was born on 05/05/2018. Now undergoing school education. The husband is earning Rs. 15,000/- as a private school teacher. Apart from , he is also earning Rs.15,000/- by taking private tuition.

3.That was resisted by the husband stating that the wife is not keeping her good conduct and was having affairs with several persons. After the marriage they were living in a joint family. At one point of time, she made threat to



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fire herself with cylinder gas. Only to lead her life, on her own wish, went out of the matrimonial home. Moreover the wife is a post gratitude decree holder and is working only a temporary teaching staff. At the conclusion of the trial, the trial court found that there is sufficient reason for the wife to live separately and awarded Rs. 5,000/- to the child. So far as the wife is concerned, her request was rejected finding that there is a clear admission by per parents stating that she is working as teacher in Good Shepherd School, Killiyanur, in Villupuram district. Now challenging the above said order, this revision has been preferred by the wife and the children on the ground that the 1st revision petitioner is studying Diploma in Elementary education in a private institution and receiving a stipend of Rs.7,000/-. So far as the 2nd petitioner is concerned, Rs,2,500/- is a nominal amount which is not sufficient to maintain the child.

4.Heard both sides.

5.While this revision is pending, the matter was referred to the mediation and there is no settlement between the parties. So the matter was heard on merits. According to the learned counsel appearing for the petitioner, divorce petition was filed before the Family Court, Pondy and so there is sufficient reason for the



first petitioner to live separately, the transfer OP was filed was also withdrawn. According to her, she was drawing stipend which cannot be construed as permanent or temporary employment.

6.Per contra, the respondent would submit that he is working in his sister school and drawing salary. So what actually happened between the husband and wife is a matter for consideration in the Family court proceedings. The above said O.S No.63 of 2017 has transferred to Family Court, Madurai and it was taken as ID No.29 of 2018.

7.So this court need not go into the above allegation and counter allegation made between the parties, in the light of the above said pendency of the divorce petition and failure of the mediation process, absolutely there is no possibility of reunion at this stage.

8.But the respondent herein filed a memo stating that he is not pressing the petition stating that he is ready to live with the wife and child. On the basis of the above said submission, the petition was dismissed as not pressed on 23/08/2018. In the above said petition, it was contended that the consent of the respondent was obtained by force. What happened to the above said undertaking given by the respondent is not explained by them at the time of



argument. Having given an undertaking stating that he is ready to live with the wife and child now he is disposing discharged this petition which may not be fair on his part.

Awarding of maintenance amount of Rs.2,500/- to the child is not reasonable one. In the present economic situation, even Rs.5,000/- awarded to the wife may not be sufficient to maintain herself and the child. However considering the fact that the respondent is working as a teacher and no particulars with regard to his correct income. Let the amount that was ordered by the trial court is liable to be enhanced to **Rs.5,000/-** in respect of the child and that amount must be paid by the respondent from the date of this revision.

9.Now so far as the wife is concerned, she has stated in her evidence that before the marriage she was working in a school and after marriage there is no work. So while cross examination of RW1, it was admitted by her to the effect that she is undergoing diploma in teacher training course. So how the trial court has come to the conclusion that the above said stipend is sufficient for maintaining the wife. So when we read the evidence of PW2 with that of the admission by the husband, during the course of cross examination, then as rightly contended by the revision petitioners, that can be only construed as



stipend amount, the stipend will be stopped after the completion of the course, that cannot be considered as monthly income or permanent or temporary job. So the trial court has erred in dismissing the petition that was filed by the wife. So the wife is entitled for maintenance in the light of the facts and circumstances of the case. More particularly when there is a clear undertaking by the husband to continue the marital relationship. So the wife is entitled to **Rs.5,000/- towards** monthly maintenance from the date of the petition filed before the trial court. In respect of the child, the award amount of Rs.2,500/- is enhanced to **Rs.5,000/-** and the enhanced amount shall be payable from the date of filing this revision.

10. With the above said modification, this revision is partly allowed.

20/12/2022

Index:Yes/No
Internet:Yes/No
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To,

The Family court,
Madurai.



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G.ILANGOVAN, J

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