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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18/11/2022

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.RC(MD)No.184 of 2021

and

Cr1.MP(MD)No.2023 of 2021

M.Manikandan : Petitioner/Respondent

Vs.

1.C.Manimekalai

2.Minor M.Navendran

Minor represented through
his mother and natural
guardian)

: Respondents/Petitioners

PRAYER:- This Criminal Revision has been filed under sections 397 and 401 of the Criminal Procedure Code, to call for the records and to set aside the order, dated 16/12/2020 passed in MC No.17 of 2019 by the Family Court,Sivagangai.

For Petitioner : Mr.R.Santhanam

For Respondents : No appearance

**ORDER**

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This Criminal Revision has been filed against in order to set aside the order, dated order, dated 16/12/2020 passed in MC No.17 of 2019 by the Family Court, Sivagangai.

2. The facts in brief:-

It is a matrimonial issue. The marriage between the petitioner and the first respondent herein took place, on 23/08/2007 as per the customary rites. Because of the marriage, two children namely the second respondent and another female child were born. The petitioner is having illicit intimacy with several women. Because of the above illegal act, he refused to pay money for the daily expenses. The wife was also harassed demanding jewels and money, etc. So because of the above said torture, she returned to her parental home. At that time, the petitioner came to the parental house of the wife and took away the female child leaving the second respondent herein. So claiming maintenance amount of Rs. 5,000/- each to herself and the child, the wife filed a petition before the trial court on the ground that the petitioner is doing contract business and earning Rs.



30,000/- per month. Apart from that, he is also doing money lending business.

3. That was resisted by the husband stating that right from the marriage, the wife is insisting upon separate house. So they started living separately in the Housing Board and on 10/12/2010 by leaving one child, the wife went to her parental home. So he filed a complaint before the police and in the enquiry, she promised to return to the matrimonial home, after taking some rest for improving her health condition. On that basis, the above said complaint was closed. Later, they joined together and again living only for about 6 months. Again, the wife went to her parental home by taking the child. So he filed HMOP No.455 of 2015 for restitution of conjugal rights. That was allowed, on 11/07/2018. Later the wife filed MC No.4 of 2015. That was also dismissed, on 08/03/2016. Thereafter, there was a compromise out of court, by which, the first respondent received Rs.2,00,000/- as one time settlement. The male child to be in the custody of the first respondent and the female child in the custody of the husband. On that basis, the above said petition was dismissed.



4.At the conclusion of the enquiry, the trial court found that one settlement was not properly proved and the husband is bound to pay each Rs.5,000/- to the wife and the child.

5.Challenging the above said order, this criminal revision has been filed by the husband.

6.Heard both sides.

7.It has been stated that there is a voluntary desertion by the first respondent and there was a settlement between the parties in the previous proceedings. So the only point arises for consideration is even as per the case of the petitioner, there was a compromise between the parties out of the court in the earlier matrimonial proceedings namely in MC No.4 of 2015 on the file of the Judicial Magistrate, Manamadurai.

8.But absolutely, no evidence is available on record to prove the above said one time settlement. The said contention that was raised by the petitioner has been rejected by the trial court. So I find no reason to



9. Now coming to the quantum, the husband has stated that he is a chief mason by profession. He has stated that he is earning Rs.700/- per day. The masons are getting not less Rs.700/- per day,



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10.Considering the earning capacity, the trial court ordered Rs.5,000/- each to the wife and the child, which cannot be stated to be excessive. However, since another child is in the custody of the husband, the amount of Rs.5,000/- ordered to the second respondent is reduced to Rs.3,000/-. In other aspects, the order of the trial court remains unaltered.

11.In the result, this criminal revision is **partly allowed and the maintenance amount awarded by the trial court is reduced to Rs.8,000/-** from Rs.10,000/- (Rs. 5,000/- to the first respondent and Rs.3,000/- to the the second respondent). Consequently, connected Miscellaneous Petition is closed.

18/11/2022

Index:Yes/No
Internet:Yes/No

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To,

The Family Court,
Sivagangai.



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G.ILANGOVA, J

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