



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:14/12/2022

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CORAM:

**THE HON'BLE MR JUSTICE G.ILANGO VAN**

Crl.RC (MD) No.258 of 2021

E.Muthukumar : Petitioner/Respondent

Vs.

Mrs.Mangala Latha : Respondent/Petitioner

**Prayer:** Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records and set aside the order passed by the Family Court, Tirunelveli, in MC No.22 of 2019, dated 10/01/2020.

For Petitioner : Mr.I.Pinaygash

For Respondent : Mr.T.Selvam

### **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:-**

It is a matrimonial issue. The marriage between the petitioner and the respondent herein took place, on



08/12/2008 as per their customary rites. There was no issue between them. Because of the above said, there was trouble between the husband and wife. The wife has stated in the petition that the husband started neglecting her and filed HMOP No.95 of 2010 seeking divorce. That was allowed, on 12/04/2011. Against which, she filed HMCMA No.9 of 2011 before the 4<sup>th</sup> Additional District Judge, Tirunelveli and that was allowed, on 03/12/2021. Thereafter, the husband filed CMSA No.14 of 2013 before this court and later, that was dismissed, on 15/11/2016. Stating that the marriage between them is in existence, she filed a petition seeking maintenance amount.

3.Resisting the claim, the petitioner stated that the wife is working in a private school, earning Rs. 15,000/- per month and his monthly salary is below Rs. 25,000/- after all deductions and he has to maintain his old aged parents.

4.On the side of the wife, she was examined as PW1 and 7 documents were marked. On the side of the husband, he was examined as RW1 and no document was marked.

5.At the conclusion of the trial, the trial court passed maintenance amount of Rs.10,000/- from the date of filing the petition.



6.Challenging the above said order, this criminal revision has been filed by the husband stating that divorce was granted, on 12/04/2011 and after a long period, petition has been filed. Apart from that, other grounds have also been raised.

7.Heard both sides.

8.The fact that the petitioner is working in the Police Department is not disputed. The cadre which now he is holding is not known. Similarly his monthly salary at present is also not known. During the course of trial, he has not chosen to produce his salary slip. Only on the basis of the counter filed by the petitioner, the trial court has stated that the petitioner was drawing Rs. 30,000/- per month. On that ground, 1/3<sup>rd</sup> of the above said amount has been awarded as maintenance.

9.Now the learned counsel appearing for the petitioner would submit that only for 10 days, they were living together and thereafter deserted. At the time of marriage, the fact that the respondent already underwent bypass surgery was suppressed and the divorce was granted in 2011 itself and after that, he performed second marriage and through the second marriage, he got two children; Apart from that, he has to maintain his old aged parents as



stated above. So, the maintenance amount must be reduced.

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10. With regard to the fact that the respondent is working in a private school and earning money is not established before the trial court. So these things cannot be re-agitated here.

11. Similarly, the reason for the desertion also need not be discussed, since on the above said ground, HMOP No.95 of 2010 was filed and that was allowed and later, it was taken to the appellate court. The appellate court reversed the grant of divorce, against which, HMCMSA is pending before this court. These are the admitted facts. It is for this court to decide the reason for separation etc. facts. So I am not going into those facts now and the revision will confine only with regard to the claim of maintenance. Except stating that he has to maintain his old aged parents and he has to incur the expenses for the school education of his two children, no other ground worth considering has been mentioned. Even the petitioner has not chosen to produce his monthly salary now. When so, without any basis, absolutely the petitioner wants this court to reduce the maintenance amount.

12. It is settled law that  $1/3^{\text{rd}}$  of the income must



be paid as maintenance to the wife. So exactly 1/3<sup>rd</sup> has been awarded by the trial court, which cannot be found fault. So, I find absolutely no reason to interfere with the order passed by the trial court in this matter.

13. In the result, this criminal revision is **dismissed**, confirming the order passed by the trial court.

14. After passing the above said order, the learned counsel appearing for the petitioner would submit that while passing interim order, the petitioner was directed to deposit 50% of the arrears amount and apart from paying 50% of the monthly maintenance, he is regularly paying the above said amount without default. So the order of the maintenance must be ordered to take effect from today.

15. But I am unable to agree with this line of argument, when the revision deserves dismissal. As no ground has been made out to reduce the maintenance, the order cannot be taken to come in force from today, which is not at all permissible in law. So the said request cannot be considered. The petitioner is directed to send the maintenance amount through Money Order, after deducting the charges.

16. With the above said observation, this criminal



revision is **dismissed**.

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

The Family Court,  
Tirunelveli.



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**G. ILANGO VAN, J**

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