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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02/12/2022

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.RC(MD)No.259 of 2021

G.Rajendran : Petitioner/Petitioner/
Respondent

Vs.

1.Mrs.Uma Maheswari
2.Minor Thivyadharshani
3.Minor Pradeesh
4.Minor.Sanjana
(R2 to R4 represented by
the mother and the natural guardian
R1) : Respondents/Respondents/
Petitioners

Prayer:- This Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the impugned order passed in Cr.MP No.246 of 2019 in MC No.58 of 2017, dated 12/02/2021 on the file of the Family Court, Tirunelveli and set aside the same.



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2

For Petitioner : Mr.I.Pinaygash

For Respondents : Mr.P.Alwin Balan

O R D E R

This criminal revision has been filed against the order passed in Cr.MP No.246 of 2019 in MC No.58 of 2017, dated 12/02/2021 by the Family Court, Tirunelveli.

2.The facts in brief:-

The marriage between the husband and wife took place, on 10/07/2011 in Tirunelveli Town as per their customary rites. At the time of marriage, it was informed that the husband is working in abroad and he will take the wife to abroad after the marriage. After the marriage, they lived in the matrimonial home. At that time, the husband was not taking care of the wife properly. At the instance of his parents and his relatives, she was harassed and ill-treated. As stated before the marriage, the husband was not working in abroad and stating that he is going to put up a shop, her jewels were received regularly. In the meantime, on 05/06/2012, a female child was born. Even after the birth of the child, the husband was not taking proper care.



Even though, the wife was very patient, the husband has not corrected himself. He is also running a beauty parlour for men and earning Rs.60,000/- per month.

3.Because of the continuous ill-treatment and trouble, the wife arranged a separate house by utilizing the parents money and started living there and the husband was staying in Kaliyakavilai and used to come once in a week, even she was not taking proper care. So because of the above said continuous issue, she lodged a complaint, on 12/05/2017 before the Tirunelveli All Women Police Station. In the enquiry, an undertaking was given by the husband that he will take proper care. On 27/09/2017, she went to Kaliyakavilai and met the husband and requested him to provide money. But he refused and she was also assaulted. Again, on 28/09/2017, her husband family members have also assaulted her and she was driven out of the house and they also locked the house. Now she is living in her parental home. Seeking maintenance of Rs.10,000/- for herself and Rs.5,000/- each for the maintainable of her three children, she filed the above said petition.



4. In spite of appearance before the trial court, later the husband remained absent. So, an ex-parte order was passed by the trial court, directing the husband to pay a sum of Rs.11,000/- in total to the respondents.

5. Later, the husband filed Cr.MP No.246 of 2019 to set aside the ex-parte order. That was also dismissed, on 12/02/2021. Challenging the same, this criminal revision has been filed.

6. Heard both sides.

7. The learned counsel appearing for the petitioner would submit that the petitioner was appearing before the trial court regularly as well as in the DVC proceedings. On a particular day, he was not appearing before the concerned court. Because of that only, an ex-parte order was passed. Even now, he is ready to take the respondents to the matrimonial home. So on that ground, the matter was referred to the Mediation and Conciliation Centre, attached to this Bench and in the mediation, there was no settlement. So, the matter was referred back to the court.



8. Even at that time of admitting the revision, the petitioner was directed to deposit 50% of the arrears of the maintenance amount and payment of regular maintenance amount. It was submitted before this court that he already deposited Rs.1,00,000/- before the concerned court and the monthly maintenance was also regularly paid. So on that ground, the learned counsel appearing for the petitioner requested that the above said ex-parte order may be set aside and the matter also be remitted back to the trial court for fresh consideration.

9. Per contra, the learned counsel appearing for the respondents would submit that the order of this court was not properly complied by depositing 50% of the arrears amount. As on date, Rs.5,83,000/- is due. On that ground, he made strong objection.

10. With regard to income, it has been submitted by the husband that he is not earning as much as mentioned in the petition. He would further submit that when a good cause is shown, the ex-parte order ought to have been set aside and for that purpose, he would rely upon the judgment of the Karnataka High Court reported in the case



of **Suryakanth Vs. Smt. Allamaprabhu alias Allawwa (2000 CRI.LJ.120)** .

11.No doubt that the ex-parte proceedings must be avoided as far as possible. Here, the husband was regularly appearing in DVC court. But he did not appear before the trial court, so an ex-parte order has been passed. Even before this court, he has not properly complied the conditional order.

12.But however, in the facts and circumstances of the case, I am of the considered view that a direction may be issued to the petitioner. Accordingly, this criminal revision is **disposed of** on condition that the petitioner shall deposit 50% of the arrears amount before the trial court within a period of 15 days from the date of receipt of a copy of this order. If the above said is deposited, then the trial court shall restore the MC No. 58 of 2017 on its file and dispose of the same, by giving reasonable opportunity to both sides, within a period of three months from the date of restoration.



7

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13. With the above said direction, this revision stands **disposed of**, failing which to comply the above said condition, the order that has been passed in this revision will stand automatically cancelled without reference to this court.

02/12/2022

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Internet: Yes/No
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To,

The Family Court,
Tirunelveli.



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8

G . ILANGO VAN , J

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Cr1.RC(MD)No.25 of 2020

02/12/2022