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Crl.O.P.(MD)No.3950 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:28/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.3950 of 2019

and

Crl.MP (MD)Nos.2329 and 4434 of 2019

D.Kuppusamy : Petitioner/Revision Petitioner/
Respondent

Vs.

1.K.Rathika
2.Minor Harshini
(Rep. Mother Rathika) : Respondents/Respondents/
Petitioners

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the order passed by the Chief Judicial Magistrate, Karur, in MC No.36 of 2015, dated 07/11/2017 which was confirmed by the Additional Sessions Judge, Karur, in Crl.RC No.9 of 2018 dated 25/06/2018 and set aside the same.

For Petitioner : Mr.M.Subash Babu

For Respondents : Mr.K.Sivabalan
for Mr.M.Bindran

O R D E R

This criminal original petition is filed seeking to set aside the order passed by the Chief Judicial Magistrate, Karur, in MC No.36 of 2015, dated 07/11/2017, which was confirmed by the Additional Sessions Judge, Karur, in Crl.RC No.9 of 2018, dated 25/06/2018.

2.Brief Facts:-

It is a matrimonial issue involving the claim of maintenance by the wife and the children. The marriage between the petitioner and the first respondent was performed on 04/03/2004 as per the Hindu customary rites and as usual, the first respondent was provided with sufficient sridhana and cash amount as well as jewels. After the marriage, they were living together and begotten the 2nd respondent. As per the allegation made in the petition, right from the marriage, she was harassed and ill-treated by the petitioner by demanding more dowry jewels etc. At one point of time, she was also satisfied with the demand of the petitioner by giving Rs.25,000/-. But later, he

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spent the money in a lavish manner and again, she was ill-treated and harassed. In 2009 also, the father of the first respondent gave Rs.30,00,000/-. Because of the payment of the above said amount, they started living together and begotten a child. The 100 sovereigns of jewels were sold by the petitioner. When the money was demanded back by the father of the first respondent, she was driven out of the house along with two children and started living with her parental home. Again in 2011, there was a compromise, by which she was taken by the petitioner to the matrimonial home. At that time, the first son namely Dharson died due to fall in water tank. Because of this, the first respondent was harassed by the petitioner. She was also threatened that they are going to perform second marriage. In the harassment, the in-laws also joined together. On 30/09/2015, she was driven out of the house. Even though compromise was arranged, they demanded Rs.5,00,000/- and 120 sovereigns of jewels and this petitioner also alleged to have intimidated the first respondent to sign in the divorce deed. When that was refused, she was assaulted. In respect of the above said occurrence, on the basis of the complaint given by the first respondent, a case in Crime No.26 of 2015 for the offences under sections 498(A), 294(B), 406 and 506(i) IPC and Section 4 of Dowry Prohibition Act was registered. The petitioner also filed HMOP No.81 of 2015 seeking divorce. The second respondent is now studying 5th standard in Indian Public School, Karur. Totally Rs.1.50 lakhs is required for her yearly fees. The petitioner is having sufficient income from the landed property and by rearing cattle. Apart from that, he is doing money lending business. With these allegations, she filed the petition seeking monthly maintenance of Rs.20,000/- for herself and Rs.30,000/- for her child.

3.It was resisted by the petitioner stating that he was working in Kerala, so once in a week, he is used to come to the house and the first respondent was not taking care of the child properly and because of that only, trouble has arisen between them. On 02/03/2013 at about 1.00 pm, because of the negligent attitude of the first respondent, the first child got down in a water tank and died. The first respondent also demanded divorce and came to her parental home and he has also used to live in the matrimonial home to her parental home frequently and on one occasion, the first respondent standing in the street, abused the petitioner and his family members in filthy language. On 07/10/2015, the father of the first respondent came to the house along with seven rowdy elements, took away 15 sovereigns of gold jewels and the child was also taken from the school. In spite of the police complaint, that was not properly taken care. But the first respondent gave a false complaint and the case has been registered.

4.Mediation was undertaken, when the petitioner filed anticipatory bail application before this court and no compromise was reached. But however, 34 sovereigns of jewels and Rs.2 Lakhs expenses was handed over by the petitioner to the



father of the first respondent. No demand of dowry and ill-treatment was meted out to the first respondent.

5.After going through the evidence on record, the trial court allowed the petition by directing this petitioner to pay a sum of Rs.10,000/- each to the respondents. Challenging the same, this petitioner has filed criminal revision before the Additional District Judge, Karur, and that was heard in Crl.RC No.9 of 2018 and that was also dismissed. Against that order, this criminal original petition has been filed.

6.Heard both sides.

7.At the out set, an objection has been raised by the respondents on the ground that this petition is not at all maintainable, since it amounts to second revision. No doubt, section 482 Cr.P.C may not lie against the order passed by the revisional court, which amount to second revision. There can be no quarrel on that point when the petitioner filed this petition stating that both the trial court and the revisional court have not taken into account the evidence properly, it is the duty of this court to go into that aspect also.

8.At the time of argument, the learned counsel appearing for the petitioner has submitted that absolutely, no document has been produced by the respondents to show the property, which was shown in the petition belongs to the father and for that purpose, he would straightaway rely upon the documentary evidence that has been produced by the respondents before the trial court. Exs.P9 and P10 are the documents, which have been produced by the first respondent to show that this property is standing in the name of the petitioner. During the course of the cross examining, this petitioner admitted that he is having properties in Trichy and Dindigul, which are landed properties. The property in Trichy is leased out. So the contention on the part of the petitioner that absolutely no evidence is placed before the court to show that his income is not at all correct and he is having source to derive the income. Whether he has to pay Rs.30,000/- per month does not make any difference. This petitioner is having landed property and having proper physical structure and capable of earning, he is bound to maintain the child and wife.

9.The contention of the petitioner that the first respondent and her child on own accord left the house, because of the attitude. But this is not supported by any evidence. It appears that a divorce petition filed in Dindigul. The contention on the part of the petitioner that the first respondent was only taken by her father from the matrimonial home, is not at all acceptable.

<https://hcservices.courts.gov.in/hcservices> also seen that before filing this petition, the



petitioner filed HMOP No.81 of 2015. So it is seen that the first respondent is having sufficient reason to live away from the matrimonial home. Absolutely, no evidence on record to show that the first respondent is a working woman and having sufficient property, capable of giving income.

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11. So in such circumstances and considering the present economic condition, Rs.10,000/- each towards maintenance per month to the wife and the child cannot be considered to be an excessive one. I find absolutely no reason to interfere in the impugned orders, that has been passed by the trial court as well as the revisional court.

12. In the result, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1. The Chief Judicial Magistrate,
Karur.

2. The Additional Sessions Judge,
Karur.

Crl.O.P. (MD)No.3950 of 2019
28/03/2022

RD(04.05.2022) 4P 3C