WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.01.2022

PRONOUNCED ON: 07.02.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P.(MD)No.3955 of 2019
and
Crl.M.P.(MD)No.2334 of 2019

Gopi @ Gopikrishnan : Appellant/Petitioner/Respondent

Vs.

1.Sumathi @ Nalayini
2.Minor Pariventhan
minor reprsented through his mother
and natural guardian,
1th respondent herein : Respondents/Respondents/Petitioners

PRAYER : Criminal Original Petition has been filed under Section 397 & 401 of Cr.P.C,to call for records in Cr.M.P.No.408/17 in Crl.R.C.(MD)No.20 of 2018, by the Principal District Judge, Tiruchirappalli, dated 09.08.2018 by confirming the order of the learned Judicial Magistrate, Manapparai in M.C.No.13 of 2015 and set aside the same.

For Petitioner : Mr.P.Pandiarajan
for Mr.N.Shanmuga Selvam

For Respondents : Mr.C.Dhanaseelan

ORDER

This Criminal Original Petition is directed against the order passed in Crl.R.C.No.20 of 2018, dated 09.08.2018, on the file of the Principal Sessions Court, Tiruchirappalli, confirming the order passed in M.C.No.13 of 2015, dated 12.04.2016, on the file of the Court of Judicial Magistrate, Manapparai.

2. The petitioner is the husband and the first respondent/wife

https://hcservices.ecourts.gov.in/hcservices/

has filed a petition under Section 125 Cr.P.C., claiming maintenance for herself and for her son in M.C.No.13 of 2015, on the file of the Judicial Magistrate Court, Manapparai. The petitioner has filed a counter statement opposing the claim of maintenance. The learned Judicial Magistrate, after enquiry, has passed an order dated 12.04.2016 directing the petitioner to pay monthly maintenance of Rs.2,000/- to the first respondent and Rs.4,000/- to the second respondent totally Rs.6,000/- from the date of petition.

3. Aggrieved by the said order, the petitioner has preferred a revision before the Principal District Court, Tiruchirappalli in Crl.R.C.No.20 of 2018 and the learned Principal Sessions Judge, Tiruchirappalli, after hearing both sides and on perusing the materials placed on record, has passed the impugned order dated 09.08.2018, dismissing the revision and thereby confirming the order of maintenance granted by the learned Judicial Magistrate, Manapparai. Challenging the order of dismissal of the revision, the petitioner, invoking the jurisdiction of this Court under Section 482 Cr.P.C., has come forward with the present Criminal Original Petition.

4. Generally, the second revision petition, challenging the order passed by the Sessions Court in the first revision cannot be entertained under Section 482 Cr.P.C. The Honourable Supreme Court in ***Shri Ganesh Narayan Hegde vs. Shri S.Bangarappa and others*** reported in ***1995 SCC (4) 41,*** has held that Section 482 of the Code of Criminal Procedure is not a bar for invoking jurisdiction of the High Court, if in the given circumstances, it is found to be necessary to prevent abuse of process of Court and the relevant passage is extracted hereunder:-

> "12.*While it is true that availing of the remedy of the revision to the Sessions Judge under Section 399 does not bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as a second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of Court or that the interests of justice otherwise call for quashing of the charges."*

5. As per the dictum of the Honourable Supreme Court, this Court, while exercising power under Section 482 Cr.P.C., can interfere only when it is satisfied that there is abuse of process of Court or that the interest of justice otherwise call for quashing of proceedings.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

6. In the case on hand, the petitioner has not even attempted to show that the orders passed by the Courts below are abuse of process of Court or that the interest of justice called for quashing of the said orders. In the present case, admittedly the marriage between the petitioner and the first respondent was solemnized on 10.11.2002 and due to their wedlock, the second respondent was born. It is evident from the records that the petitioner as well as the first respondent, as usual, in the matrimonial proceedings had been raising allegations and counter allegations against each other. The petitioner as well as the first respondent have taken a stand that the other party is having illicit affairs. But the Courts below have dealt with that aspect and came to the conclusion that the same were not proved. It is also not in dispute that the first respondent has filed a divorce petition in H.M.O.P.NO.308 of 2008, on the file of the Principal Subordinate Court, Tiruchirappalli and that the same was ordered to be dismissed.

7. The learned Judicial Magistrate, after considering the evidence adduced, has come to a decision that due to dowry harassment and also the petitioner's illicit affairs with another lady, the first respondent had good reasons to leave the matrimonial home and that the petitioner alone had neglected the respondents and thereby failed to maintain them. Admittedly, the petitioner is working as Junior Assistant in Agricultural Department and even according to the petitioner, he was receiving the monthly salary of Rs.17,000/- at that point of time. The main contention of the petitioner is that he is a visually challenged person and he has to pay 1/3rd of his salary to his Assistant. But the trial Court as well as the revisional Court had considered the above aspects and rightly awarded the maintenance to the respondents.

8. At the time of enquiry, the learned Counsel for the respondents submitted that the second respondent had attained majority. Though the petitioner has alleged that the first respondent has been working in Aroma stick manufacturing company and is earning Rs.7,500/-p.m., both the Courts below have specifically held that the petitioner has not produced any iota of evidence to substantiate the same.

9. Considering the entire facts and circumstances and the status of the parties and the economic scenario, the maintenance award at Rs.6,000/-p.m., to both the respondents is very much reasonable and the same cannot said to be excessive. Though the second respondent had attained majority during the pendency of the above petition, the petitioner is certainly liable to pay the arrears to the second respondent calculated till he attains majority. Hence, this Court does not find any illegality in the findings recorded by the trial Court and confirmed by the revisional Court. Consequently the Criminal Original Petition is liable to be dismissed.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

10. In the result, the Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

SSL

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 Principal District Judge, Tiruchirappalli.

2.The Judicial Magistrate, Manapparai.

+1 CC to M/s.C.DHANASEELAN, Advocate (SR-5105[F] dated 09/02/2022)

Crl.O.P.(MD)No.3955 of 2019
07.02.2022

MGJ(25.02.2022) 4P 4C

https://hcservices.ecourts.gov.in/hcservices/