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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 24/11/2022

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

Cr1.RC(MD)No.472 of 2021

and

Cr1.MP(MD)No.5019 of 2021

R.Jeyakumar : Petitioner/First Respondent

Vs.

J.Mahalakshmi : Respondent/Appellant

PRAYER:-This Criminal Revision has been filed under sections 397 and 401 of the Criminal Procedure Code, to call for records and set aside the order, dated 29/01/2021 passed in the Criminal Appeal in CA No.23 of 2020 on the file of the Principal District Court, Theni, modifying the order, dated 18/02/2019 passed in MC No.9 of 2013 on the file of the Judicial Magistrate, Bodinayakannor, in so far as fixation of the quantum of monthly maintenance payable by the petitioner to the respondent is concerned and pass such other further orders.

For Petitioner : Mr.J.Barathan

For Respondent : Mr.V.Manikandan

**ORDER**

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This Criminal Revision has been filed seeking in order to set aside the judgment, dated 29/01/2021 passed in Criminal Appeal in CA No.23 of 2020 on the file of the Principal District Court, Theni in so far as the award of maintenance to the respondent is concerned.

2.The facts in brief:-

As per section 23(2) of the Protection of Women from Domestic Violation Act, 2005, the above said petition was filed stating that the marriage between the husband and wife was performed, on 01/04/2010 as per the their family and customary rites. At the time of marriage, the wife was provided with sufficient house hold articles, seervarisai, etc. They were living in a joint family. At that time, all the respondents mentioned in the above said petition, joined together ill-treated stating that the above said sridhana articles are not sufficient. The wife was not permitted to take food and use the house-hold articles. They demanded Rs. 2,00,000/- and 20 sovereigns as additional dowry. Suspecting her conduct, she was also ill-treated. The



first respondent namely the husband also came to the house in a drunken mood and also caused assault. Because of the above said ill-treatment, she suffered mentally and physically and even during her pregnancy, she was not treated properly. So she went to her parental home for delivery also. She delivered a female child, on 04/01/2011. At that time, they also tried to kill the child. The husband did not visit the child till now. So she filed a petition for restitution of conjugal rights. So before the Social Welfare Officer, the husband undertook to take the wife to matrimonial home. But in spite of the above said undertaking, he filed HMOP No.416 of 2012 before the Sub Court, Trichy. Later, the wife filed HMOP No.193 of 2012 before the Sub Court, Theni seeking restitution of conjugal rights and also seeking other reliefs under the provisions of the Domestic Violence Act, the above said petition was filed.

3.That petition was resisted by the husband along with his family members stating that the wife deserted the matrimonial home voluntarily by picking up quarrel; She was not attending the domestic duty also; There was no ill-treatment or harassment and all the allegations



are denied. The income particulars, that was mentioned by the wife was also disputed and the husband is working as an Accountant in a private Concern for a monthly salary of Rs.3,000/-.

4.The trial court allowed the petition filed by the wife and granted several reliefs. Against which, appeal has been preferred by the respondents in MC No.9 of 2013 before the Principal District Judge, Theni. That was heard in Crl.A No.23 of 2020 and the first appellate court partly allowed the appeal and directed the husband to pay Rs.15,000/- towards monthly maintenance to the wife and in respect of other reliefs, the order was set aside.

5.Aggrieved by the above said order, this revision has been preferred by the husband.

6.The learned counsel appearing for the revision petitioner/husband would submit that HMOP filed by him seeking for divorce was granted by the trial court. But the order copy was not available and finding is also not before this court.



7.It is further submitted that no documentary evidence was marked or proved before the trial court to show the actual income of the husband and his work as Accountant in a private concern.

8.Per contra, the counsel appearing for the respondent/wife would submit that now child born to them is aged about 12 years and the reason for the separation is because of the continuous harassment, that was made by the husband and his family members. According to him, absolutely, there is no ground to interfere into the order of maintenance passed by the trial court.

9.Now let us go to the finding of the appellate court.

10.The marriage between the parties and the birth of the child is not disputed. With regard to the issue of separation, even though an elaborate discussion has been made by the appellate court, the facts remain that divorce has been granted in favour of the revision petitioner/husband. Whether any appeal has been preferred by the wife or not is clear on record. So



it may not be necessary for this court to record a finding with regard to the reason for the factum of separation.

11.It is the evidence of the husband to the effect that because of the difference of opinion between the husband and the wife, the wife was taken to the parental home, when she was pregnant. The showering ceremony was performed in the parents home of the wife. The bangle ceremony was performed only in the parents of the wife. The husband attended the above ceremony. But according to the wife, her husband did not visit the child. So it is seen that in 2013 onwards, they were living separately. Even after the birth of the child, there was no reunion. Even the wife has stated in the petition that there was an undertaking by the husband to take her to the matrimonial home, there was no proper evidence to show the same.

12.Now the separation is admitted and divorce is also granted. Even though the divorce has been granted, the husband is bound to pay maintenance to the wife, which cannot be denied and disputed.



13. With regard to the income, even though it has been stated in the counter by the husband that he is working in a private concern for a monthly salary, during the course of his evidence, he has admitted that he is doing vegetable business in the Gandhi Market, Trichy and due to loss in the business, no property is owned by him. But the evidence of the father of the husband has been taken into account to hold that along with his brother-in-law, the revision petitioner/husband is doing vegetable business in the Trichy Gandhi Market and also owning vegetable mandy. So this shows that the revision petitioner/husband is earning sufficiently. So granting of monthly maintenance of R.15,000/- jointly to the wife and the child cannot be considered to be, in the light of the above said status of the parties, excessive. So I find no irregularity or illegality in the order of the first appellate court.

14. In the result, this criminal revision is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

24/11/2022

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

- 1.The Principal District Judge,
Theni.
- 2.The Judicial Magistrate,
Bodinayakkanur,
Theni District.



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G.ILANGOVAN, J

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