



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10/11/2022

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.RC(MD)No.392 of 2021
and
Crl.MP(MD)No.4049 of 2021

S.Abuthahir : Revision Petitioner/Respondent

Vs.

1.A.Shameembanu
2.A.Shahir Uvaiz
3.Minor A.Mohamed Sohail Lutf
(The minor 2nd 3rd respondents
represented through their
Mother/Natural Guardian
1st Respondent) : Respondent/Petitioners

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records in M.C No.35 of 2018 on the file of the Family Judge, Trichurappalli and to set aside the order passed in MC No.35 of 2018, dated 12/03/2021 and to pass any such further or other orders.

For Petitioner : Mr.C.M.Arumugam

For Respondents : Mr.T.Antony Arulraj



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This criminal revision has been preferred seeking to set aside the order, dated 12/03/2021 made in M.C No.35 of 2018 on the file of the Family Judge, Trichy.

2.The facts in brief:-

It is a matrimonial issue between the husband and wife. The marriage between the husband and wife was performed in 2002. Because of the marriage, two children born to them. After the marriage, they were living together. During the above said matrimonial life, the wife was assaulted physically, when she used to come to the home in late night. Whenever, the husband questioned the same, she was assaulted by him. At the intervention of the Jamath, the children and the wife were taken to the parental home and the children were also admitted in the school. On 09/01/2018, the wife went to the house of the husband and requested him to make provision for their life. At that time, she was chased away. Over the above said occurrence, on 10/01/2018, she has also lodged a complaint in Trichy K.K. Nagar Police Station. Seeking maintenance amount of Rs.25,000/- for herself and the children and apart from Rs.25,000/- towards educational and other expenses, the above said petition was filed.



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3. That petition was resisted by the husband stating that mutalaq pleaded by the wife is not correct; The wife wants to maintain her parents and for that, the husband expressed his inability; But however, the wife was insisting upon the above said care; Before the Jamath, the wife expressed his unwillingness to live together with her husband; The complaint given by the wife before the Trichy K.K Nagar police station came to be closed as false; Because of the above said false complaint, the husband was in prison for about 10 days and the wife was also refused to hand over the children; More-over, she is owning properties and by renting out the same, she is earning to the tune of Rs.45,000/- per month; She only voluntarily deserved the husband.

4. At the conclusion of the enquiry, the trial court came to the conclusion that no step was taken by the husband for retaking the wife and the children. On the basis of the complaint given by the wife, it was decided that the desertion pleaded by the husband is not true. Regarding the income, it was found that the husband, after completing his B.E Engineering was working abroad for some time. He returned to India in 2014 and looking after the construction business. No income particulars have been produced by him. So, an approximate income of Rs.30,000/- was taken. On that basis, the maintenance amount of



Rs.10,000/- for the wife and Rs.5,000/- each to the children till they attained majority was ordered.

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5.Challenging the same, this revision has been preferred by the husband.

6.Heard both sides.

7.The learned counsel appearing for the revision petitioner/husband would submit that the factum of desertion was not properly considered by the trial court and no effort for reunion was also made by the wife; The evidence was also given by her before the Magistrate court was also been relied. It is also further submitted that no document has been produced by the wife to show the monthly income of the husband and the second respondent has now attained majority.

8.Per contra, it has been submitted by the wife to the effect after passing the above said order, not even a single penny has been paid by the husband.

9.Against the passed in O.S No.4 of 2020, CMA has also been filed. O.S.No.41 of 2020 was filed by the wife for declaration that the marriage between them is null and void. But the other particulars with regard to the above said judgment is not available.



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10. Now whatever it may be, from the order that has been passed by the trial court, it is seen that right from 2017, they are living separately and before the Jamath, some talk was undertaken. On what basis, the suit in O.S No.4 of 2020 was preferred is not clear on record. But the Maintenance Case has been filed in 2018 itself. The above said case was filed only in 2019. It appears that during the pendency of the above said maintenance proceedings, the order of divorce has been passed.

11. But reading of the evidence given by the wife shows that it is admitted on the part of the wife that in 2007, her husband is in abroad. In 2009, the wife also went abroad during vacation. After the marriage of the brother of the husband, a separate house was arranged and later, in 2013, a house was constructed. From 2005 onwards, both were living separately. In 2013, the husband permanently came to India. In May 2017, the husband pronounced talque. In the Jamath, the husband refused for re-union. So the wife received the jewels and other sreedhana articles and it was suggested to her that effort was made by the husband for reunion, only the wife refused. On 10/01/2018, a police complaint was given and the husband was arrested and remanded to custody and later, released on bail.



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12.It has been stated that in the above said criminal case, the husband was acquitted. The entire evidence shows that even though, there was no trouble between them till 2007, later trouble has arisen between them, over which a police complaint has also been given. Because of the arrest and judicial custody, it has widened. There is no chance for reunion between them, more so, in the light of the suit filed by the wife.

13.Now whatever, it may be the position, it is the duty of the husband to maintain the wife and children. Even though, it has been stated that he is ready to retake the children and maintain them, no effort was made so far. Regarding his income, Rs.30,000/- has been taken into account approximately, considering the educational qualification and the business, the above said amount has been taken into consideration, which cannot be considered to be, either excessive.

14.Considering the educational qualification of the husband and the business of the husband, the order of payment of maintenance amount of Rs.10,000/- to the wife and Rs.5,000/- each to the children cannot be considered to be excessive. Now the second respondent has also attained majority. Till that time, the husband has to pay the money. But that was not paid till that period. So the second



respondent is entitled to get the maintenance amount by filing a petition for execution of the order.

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15.In the light of the above said circumstances, I find that no valid ground is made out by the revision petitioner to entertain this revision.

16.In the result, this criminal revision fails and the same is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

10/11/2022

Index:Yes/No
Internet:Yes/No

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To,

The Family Judge,
Trichy.



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G.ILANGOVAN, J

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Cr1.RC (MD) No.392 of 2021

10/11/2022