



CrL.R.C(MD)No.611 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.11.2022

CORAM:

THE HON'BLE MR.JUSTICE G.ILANGO VAN

CrL.RC(MD)No.611 of 2021
and CrL.MP(MD)No.6713 of 2021

1. Kanimozhi

2. Minor Krish

... Petitioners

Vs

1. Mohan Prabhu

2. S.V.Devarajan

3. Shantha

... Respondents

Prayer: This Criminal Revision Case filed under Section 397(1) and 401 of Cr.P.C., praying to set aside the order in C.A.No.22 of 2018, dated 27.11.2019, by partly confirming the order of the Judicial Magistrate No.II,Thanjavur in MC.No.37 of 2014, dated 07.03.2018 and call for the records and allow the grant of relief sought by the petitioners.

For Petitioners : Mr.S.Jayachandran

For Respondent : No Appearance



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ORDER

This Criminal Revision Case has been filed by the revision petitioners to set aside the order in C.A.No.22 of 2018, dated 27.11.2019, by partly confirming the order of the Judicial Magistrate No.II, Thanjavur in MC.No.37 of 2014, dated 07.03.2018, by granting monthly maintenance of Rs.10,000/- to the second revision petitioner and dismissed the same, so far as, the first revision petitioner is concerned.

2.The facts in brief is as follows:

The marriage between the husband/first respondent and the wife/first revision petitioner was performed, as per their customary rites and rituals on 01.02.2009. After the marriage, the second revision petitioner was born on 19.03.2012 and till that time there was no problem between them. According to the wife, the problem started after the birth of second revision petitioner and the husband's family demanded Rs.2 lakhs as dowry, but it was not complied with by the first revision petitioner and paid only Rs.1,50,000/-. Later, there was a compromise between them in June to August, 2012 and they started living together, as joint family and during that time, according to the



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wife, she was ill treated and harassed. Therefore, she lodged a complaint on 25.09.2014, before the Madhavaram Police Station. A case in Crime No.346 of 2014 was registered and it is stated to be pending. Because of the above said torture, she was driven out of the house.

3.On these grounds, she filed a petition under Provisions of Domestic Violence Act, claiming Rs.10,000/- as maintenance amount each for herself and for the minor child/second revision petitioner and also for other reliefs. In the said petition, apart from the above said claim of maintenance amount, she was also granted with some other reliefs, which we are not concerned herewith. On the side of wife, 6 documents were marked and she was examined as PW1. On the side of husband, two documents were marked and himself examined as RW1. At the conclusion of enquiry as stated above, the trial Court dismissed the petition. Against which, the above said appeal has been preferred before the lower appellate Court and the said appeal was also partly allowed, by granting monthly maintenance of Rs.10,000/- to the second revision petitioner and dismissed the same, so far as, the first revision petitioner is concerned.



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4.The prayer of maintenance was resisted by the husband stating that right from the date of marriage, the wife was not behaving as a dutiful wife, without proper reason she deserted the matrimonial home and thereafter living in her parental home. According to him, he is not liable to pay maintenance to the wife.

5.Now, challenging the above said order, this revision has been preferred by the wife and child, stating that the wife is also entitled for compensation and the child is also entitled for enhanced maintenance. The points for consideration is

- 1. Whether the claim made by the wife/first revision petitioner is maintainable or not?*
- 2. Whether the child/second revision petitioner is entitled for enhanced maintenance?*

Point No.1:

6.I am unable to convince with the reason assigned by trial Court, in refusing the maintenance amount to the wife. The trial Court has taken into account of the conduct of the wife, during the course of evidence. It has been pointed out that for most of the questions, the wife has not given any



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ready/immediate answer and after a long thinking only, she gave the evidence.

But this is not sufficient to reject the claim and finding that the wife did not maintain good conduct. Absolutely, the finding is erroneous in nature. There is no allegation to the effect that the wife is suffering from any understanding incapacity. So that ought not have been taken into account by the trial Court.

7.Now, coming to the ground of desertion, she was subjected to cross examination at length. More than, in two occasions, she was recalled and cross examined. During the course of cross examination, she has stated that at the time of marriage, the respondent stated that he was working in Vodafone Company as a Manager and has stated that he is receiving Rs.30,000/- as salary. The reason for giving the police complaint has also been stated by her. But her allegation to the effect that her Father-in-law misbehaved with her, is without any basis. Absolutely, it is a false statement, which was not supported by either direct or circumstantial evidence. A suggestion was made to her that she was taken by her father to her parental home, without informing the husband. The way in which, the cross examination was made and the facts that have been stated during the course of cross examination, clearly shows that the husband is giving much importance even on petty issues. She has further admitted that they were living happily till the marriage of her husband's brother. She has also



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admitted that there was a compromise between them, at the interruption of one of the Member of the Legislative Assembly. She has also stated that even if she goes to the house of the husband, she might be killed. The fear expressed by the wife is absolutely without any basis.

8.Now, we will go to the evidence of the husband, he has stated that he is not willing to pay maintenance even to the child. After getting job, he is ready to pay maintenance. At the time of marriage, he was working in Vodafone Call Centre and his monthly salary was Rs.30,000/-. They separated in the year 2015. After separation only, the above said compliant was given. He also filed a Divorce Petition before the civil Court. To a question, as for the reason for separation it is stated that there was petty quarrel between his wife and his brother's wife. Even after the above said quarrel between them, he did not take any steps to arrange another house for their living. So, the reading of cross examination portion of his evidence shows that over a petty quarrel only, there was a dispute between them and no steps were taken by him to retake the wife and child to matrimonial home. On the other hand, he filed a divorce petition seeking divorce. So, the conduct on the part of the husband clearly shows that he wantonly neglected the wife and child. The reason for the separation is also a petty one. No possible steps have not have been taken by the husband for



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reunion, he cannot say that only the wife has deserted him and living separately without any probable reasonable cause. So such a plea is not at all maintainable and acceptable one.

9.Considering the above facts and circumstances, I am of the considered view that the wife is also entitled for maintenance. Since already Rs.10,000 has been awarded as a maintenance to the child/second revision petitioner, Rs.5,000 is ordered as a maintenance to the wife, to the first revision petitioner herein.

Point No.2

10.Regarding the enhancement of maintenance for the second revision petitioner, absolutely there is no reason to enhance it. As per the records it clearly shows that the actual monthly salary of the husband is only Rs. 30,000/-. Therefore, the second revision petitioner is not entitled for any enhanced maintenance.

11.In view of the above, ***this Criminal Revision Case is partly allowed, by modifying the orders of the Court below, by directing the respondent to pay a maintenance of Rs.5,000/- to the wife/first revision***



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***petitioner, from the date of filing of this revision and dismissing the claim of
enhancement of maintenance for the child/second revision petitioner.***

Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Internet: Yes/No

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G.ILANGO VAN, J.

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ORDER IN

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