



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 14.12.2021
Delivered on : 07.01.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.676 of 2020
and Crl.M.P.(MD)No.6772 of 2020

Gopinath .. Petitioner/Appellant/Respondent

Vs.

Kavitha .. Respondent/ Respondent/ Petitioner

Prayer : This Revision Case is filed under Section 397 r/w. Section 401 of Cr.P.C., against the order, dated 31.01.2020, passed in C.A.No.3 of 2019, on the file of the Principal Sessions Judge, Tiruchirappalli, confirming order, dated 24.10.2018, passed in M.C.No.182 of 2014, on the file of the Additional Mahila Court, Tiruchirappalli.

For Petitioner : Mr.AL.Kannan

For Respondent : Mr.R.Sundar

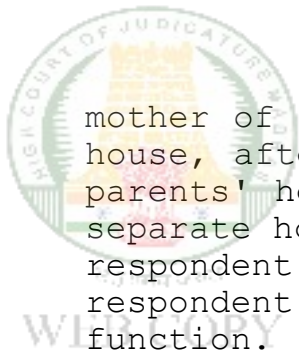
ORDER

This Criminal Revision has been filed against the order, dated 31.01.2020, passed in C.A.No.3 of 2019, on the file of the Principal Sessions Judge, Tiruchirappalli, confirming order, dated 24.10.2018, passed in M.C.No.182 of 2014, on the file of the Additional Mahila Court, Tiruchirappalli.

2. The respondent herein / wife has filed a petition for maintenance before the Additional Mahila Court, Tiruchirappalli, in M.C.No.182 of 2014. Against the order, the revision petitioner / husband has filed an appeal before the Principal Sessions Judge, Tiruchirappalli, in Crl.A.No.3 of 2019. That appeal was dismissed by the Principal Sessions Judge. Against which, the petitioner has preferred this Revision.

3. Brief substance of the petition, in M.C.No.182 of 2014, is as follows:-

The marriage of the petitioner and the respondent was solemnized on 11.02.2001 in Tiruchirappalli. At the time of marriage, 40 sovereigns of gold, silver utensils and other household articles were given to the petitioner by her parents. They lived as a joint family with the parents of the respondent. The



mother of the respondent chased away the petitioner from out of the house, after initimating the respondent, the petitioner went to her parents' house. Then, the petitioner and the respondent lived in a separate house. When the petitioner was pregnant, the mother of the respondent came to the house and assaulted the petitioner. The respondent and others refused to participate in the baby shower function. On 05.06.2005, a female child was born. The respondent used to drink alhocol and he used to assault the petitioner - wife and harassed her physically. Again, the petitioner was pregnant and she had an abortion. Thereafter, the petitioner was pregnant again and a female child was born on 29.01.2013. Due to the harassment of the respondent's mother, the petitioner give up her. The petitioner was doing tailoring and beautician work from home. Due to the harassment, the petitioner filed the petitions to grant divorce, to direct the respondent to return back her gold jewels and house hold articles, to give protection to the petitioner, to leave the minors in the custody of the petitions and to pay a compensation under Sections 18, 21 and 22 of the D.V. Act.

4. Brief substance of the counter filed by the respondent, in M.C.No.182 of 2014, is as follows:-

Only 12 soverigns of gold was given to the petitioner and 3 sovergins of gold was given to the respondent, at the time of marriage. In return, 10 soverigns of Thali Chain was given to the petitioner by the parents of the respondent. The Thali Chain is still with the petitioner. The petitioner has taken back her 12 sovergins of gold and she pledged the jewels in SBI, Ponmalai Branch, Trichy. The marriage expenses were spent by the respondent. From 2002 till 2007, both the petitioner and the respondent lived with the parents of the petitioner. From 2007 till 2012, the petitioner and the respondent lived separately. The allegations stated in the petitioner are all false. In fact, the baby shower function was conducted only by the family of the respondent. It is true that 2 female children were born to them. The first daughter was maintained only by the respondent. The petitioner is maintaining the second daughter. Only with a motive to get money from the respondent, this petition was filed.

5. One witness was examined and 3 documents were marked on the side of the petitioner. 2 witnesses were examined and 3 documents were marked on the side of the respondent. After considering both sides, the trial Court has dismissed the petition under Sections 18, 21 and 22 of DV Act. Under Section 20 of DV Act, the trial court has ordered the husband to pay a sum of Rs.5,000/- for the maintenance of the petitioner / wife and Rs.3,000/- for the maintenance of the second child on or before the 5th day of every English Calender month. Against that order, the respondent therein / husband has filed this revision.

6. On the side of the revision petitioner, it is stated that it voluntarily deserted the husband and has left the

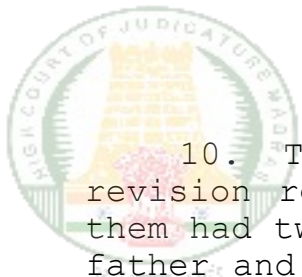


matrimonial home. All the efforts taken by the revision petitioner, to bring back the respondent ended in failure. The respondent / wife filed a divorce petition in H.M.O.P.No.884 of 2014 with false allegations. After suppressing various facts, the respondent - wife filed a false petition in M.C.No.182 of 2014 before the Additional Mahila Court, Trichy. Though the second daughter is residing with the wife, the husband is paying the School fees and he continued to meet out all her expenses and this fact was admitted by the respondent / wife in her evidence. The revision petitioner -husband filed a petition in G.W.O.P.No.17 of 2015 on the file of the Family Court, Trichy, seeking custody of the 2nd daughter-Shivani. The respondent herein / wife also filed a petition in G.W.O.P.No.11 of 2017 as a counter blast. The Additional Mahila Court has failed to consider that the wife failed to prove cruelty and has wrongly passed an order of maintenance.

7. On the side of the revision petitioner, it is stated that a joint compromise memo was filed in G.W.O.P.No. 17 of 2015 and G.W.O.P.No.11 of 2017 filed before the Family Court, Trichy. Both the parties mutually agreed that the first female child - Abarijitha will be in the custody of the father - revision petitioner and the second female child - Shivani will be in the custody of the mother - respondent and that there is no mutual fiscal claim against the parties. Both the parties filed a joint compromise memo in H.M.O.P.No.884 of 2014 and they agreed for a decree of divorce. Though the above said facts were brought to the knowledge of Additional Mahila Court and the Principal Sessions Court, Trichy, a maintenance order was passed by the Additional Mahila Court and the same was confirmed by the District Sessions Court.

8. Both the Courts failed to consider that the wife was not having any right to sought for any remedy, since she did not come under the purview of 2 (a) and 2 (f) of the Protection of Women from Domestic Violence Act, 2005. The revision respondent - wife failed to prove the case by material evidence. Both the courts failed to consider that, the wife has filed a divorce petition and that she is the one, who deserted the husband. Both the courts failed to consider the fact that the wife is a self employed person and she is having sufficient means to maintain herself. Both the courts failed to take note of Clause (C) of the joint compromise memo filed by both the parties, wherein, they agreed that there should be no fiscal claim against each other. The revision petitioner- husband has to take care of his elder child, old parents and to take care of himself and prayed the impugned order to be set aside.

9. On the side of the wife, it is stated that even after a decree of divorce, a wife is entitled for maintenance and that the wife cannot curtail the right of the minor child for claiming maintenance and prayed that the petition is to be dismissed.



10. The marriage between the revision petitioner and the revision respondent is not disputed. It is admitted that both of them had two daughters. The first daughter is in the custody of the father and the second daughter is in the custody of the mother. It is seen that the wife filed a divorce petition in H.M.O.P.No.884 of 2014 and by filing a joint compromise memo, the marriage between the petitioner and the respondent was dissolved. The husband filed a petition in G.W.O.P.No.17 of 2015, for the custody of the second daughter. The wife filed a petition in G.W.O.P.No.11 of 2017, for the custody of the first daughter. In both the G.W.O.Ps, a joint compromise memo was recorded, wherein, the first daughter was left in the custody of the father and the second daughter was left in the custody of the mother. All the above said facts are admitted by both the parties.

11. The wife filed a case in M.C.No.182 of 2014 before the Additional Mahila Court, and the Court has ordered a sum of Rs.5,000/- as maintenance for the wife and a sum of Rs.3,000/- for maintenance of the second daughter. The appeal filed by the husband in C.A.No.3 of 2019 was dismissed by the Principal Sessions Court, Trichirappalli. The revision petitioner has filed this revision on two grounds:-

(i) that the wife has signed a joint compromise memo, wherein, it was endorsed that there was "no fiscal claim against the parties" and hence, the wife is not entitled to claim maintenance from the husband.

(ii) that the wife is doing tailoring work and beautician work and she is earning sufficient amount to maintain herself.

12. On the side of the revision respondent- wife, it is stated that the compromise memo filed in G.W.O.P.s, will not curtail the rights of the wife in the M.C. case. Due to COVID-19, the business of the respondent came to a stand still and the revision petitioner is preventing the clients to approach the revision respondent.

13. On the side of the husband, it is stated that the revision petitioner is getting only a sum of Rs.20,000/- per month. The claim of the revision respondent is that the revision petitioner is a permanent employee and he is getting RS.40,000/- as monthly salary. The revision petitioner - husband did not come forward to file the pay slip and the revision respondent - wife did not take steps to produce the pay slip.

14. The revision petitioner- husband fairly admits that he is ready to oblige the order of the trial Court in paying Rs.3,000/- as maintenance for the minor child. The income of the wife was not specifically mentioned in the revision petition. "No fiscal claim against the parties" is a vague term. This term in the G.W.O.P. cannot be interpreted as if the wife has given up her right of maintenance in the M.C. case.



15. In view of the admission made by the revision respondent - wife that she is doing tailoring and beautician work, the order of the Courts below is hereby modified that the **revision respondent - wife is entitled to a sum of Rs.2,000/-** as maintenance amount and the maintenance for the **minor child - Shivani is enhanced to Rs.4,000/-**. In total, the revision petitioner is directed to pay a sum of Rs.2,000/- p.m. to the wife and Rs.4,000/- to the second daughter as monthly maintenance to be paid on or before the 5th day of every English Calendar month.

16. With the above modification, this Criminal Revision Case is partly allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Ls

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 Sessions Judge,
Tiruchirappalli.

2.The Judge,
Additional Mahila Court,
Tiruchirappalli.

3.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.L.KANNAN, Advocate (SR-1037[F] dated 10/01/2022)

Crl. R.C.(MD)No.676 of 2020

07.01.2022

MGJ(20.01.2022) 5P 6C