



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.746 of 2021

and

Crl.M.P(MD)No.8612 of 2021

WEB COPY

K.Ramakrishnan

... Petitioner

Vs.

1.Mythili

2.Minor Sri Parthiban

... Respondents

(Minor R-2 represented through his mother and guardian R-1)

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records and set aside the order passed in M.C.No.41 of 2018, dated 02.09.2021 on the file of the Family Court, Tirunelveli by allowing this Criminal Revision Petition.

For Petitioner	: Mr.H.Arumugam
For Respondents	: Mr.M.P.Senthil

ORDER

This revision has been filed challenging the order of maintenance in M.C.No.41 of 2018, dated 02.09.2021 on the file of the Family Court, Tirunelveli, thereby partly allowed the petition in favour of the respondents that the first respondent is entitled to get maintenance at Rs.4,000/- and the second respondent is entitled to get maintenance at Rs.6,000/- respectively.

2.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the entire materials available on record.

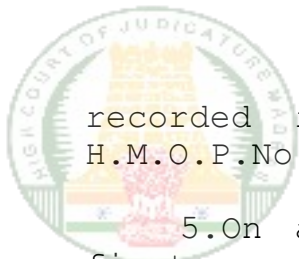
3.The learned counsel appearing for the petitioner would submit that the first respondent had left the matrimonial home on her own volition and she refused for re-union. Further, the petitioner obtained decree of divorce on the ground of cruelty and desertion, which was also confirmed by this Court in C.M.A(MD)No.845 of 2015, by Judgment and Decree, dated 17.09.2018. Therefore, the first respondent is not entitled for any maintenance as per Section 125(4) & (5) of Cr.P.C. In support of his contention, he relied upon the Judgment reported in **(2003) 11 SCC 303 - Deb Narayan Halder Vs. Anushree Halder**, in which the Honourable Supreme Court of India held



as follows:-

"20. We therefore hold that the High Court was not justified in setting aside the findings recorded by the learned Judicial Magistrate. We have reached this conclusion after appreciating the evidence on record since there is no discussion of the evidence in the judgment of the High Court. The counsel for the respondent posed before us a question as a part of his submission as to why the respondent should leave her matrimonial home without any reason. In cases where there is a dispute between husband and wife it is very difficult to unravel the true reason for the dispute. After separation when the relationship turns sour, all sorts of allegations and counter allegations are made against each other. Evidence of contemporaneous nature therefore plays an important role in such cases as it may reveal the thinking and attitude of the parties towards each other at the relevant time. Such evidence is usually found in the form of letters written by the parties to each other or to their friends and relatives or recorded in any other document of contemporaneous nature. If really the respondent was subjected to cruelty and harassment in the manner alleged by her, we have no doubt she would have written about such treatment to her friends and relatives with whom she may have corresponded. The reports allegedly made by her to the police may have thrown some light on this aspect of the matter. Such evidence is completely absent in this case. It appears to us that the parties lived happily for many years after the marriage till about the year 1996, whereafter there was some misunderstanding which ultimately resulted in their separation. Why this happened, it is difficult to fathom, but the evidence on record does not convince us that the respondent was subjected to torture and harassment by the appellant, and certainly not for the reasons alleged by her. The Court is not permitted to conjecture and surmise. It must base its findings on the evidence produced before it by the parties. The enquiry by the Court is restricted to the evidence on record and the case pleaded by the parties. It is not permissible to the Court to conjecture and surmise and make out a third case not pleaded by the parties only to answer the query such as the one posed to us."

4. Per contra, the learned counsel appearing for the respondents would submit that only on the harassment and torture given by the petitioner, the first respondent was driven out from the matrimonial home and she has been living separately. In fact, the learned



recorded in the divorce petition filed by the petitioner in H.M.O.P.No.177 of 2014.

5.On a perusal of the records and also the evidence of the first respondent revealed that after marriage between the petitioner and the first respondent herein, she conceived and as such, she was advised to take rest. However, the petitioner compelled her to abort the child and when she refused to do so, she had driven out from the matrimonial home. Therefore, she had gone to her elder sister's house and admitted in the hospital. Thereafter, she gave birth to the second respondent herein. Even after birth of the second respondent, the petitioner or his family members never visited her and never helped any single penny for the expenses occurred during delivery. In the year 2011, the father of the petitioner herein came to the house of the first respondent and invited her for his younger son's marriage. On trusting his words, the first respondent went to the matrimonial home and there again she was harassed and tortured by the petitioner's mother and as such, she was driven out from the matrimonial home and also foisted false allegation against the first respondent and did not allow her to live in the matrimonial home. There were evidence to show that only on the torture and harassment given by the petitioner, the first respondent was driven out from the matrimonial home and living separately.

6.The learned counsel appearing for the respondents cited the Judgment reported in **(2000) 3 SCC 180 - Rohtash Singh Vs. Smt.Ramendri and others**, in which, the Honourable Supreme Court of India held that a woman who has been divorced by her husband on account of a decree passed by the Family Court continues to enjoy the status of wife for the limited purpose of claiming maintenance allowance from her husband. The claim for maintenance under the first part of Section 125 Cr.P.C is based on the subsistence of marriage while claim for maintenance of a divorced wife is based on the foundation provided by explanation (b) to sub-Section (1) of Section 125 Cr.P.C. If the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to maintenance allowance. Though the divorce granted on the ground of desertion, it is not a bar for the wife to claim for maintenance as a divorced wife. When the divorce was passed as against the wife, the matrimonial relationship between the husband and wife came to an end, the mutual rights, duties and obligations should also come to an end.

7.Therefore, the respondents are entitled for maintenance since after divorce she is entitled to claim maintenance from the petitioner herein. After her divorce, she becomes a destitute. If she cannot maintain herself or remains unmarried, the petitioner herein continues to be under the statutory duty and obligation to provide maintenance to the respondents.



8.In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, the Criminal Revision Case is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Ps

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

The Judge,
Family Court,
Tirunelveli.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-11362[F] dated 10/03/2022)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-11003[F] dated 10/03/2022)

Cr1.R.C(MD)No.746 of 2021
09.03.2022

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KB(17.03.2022) 4P 4C