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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17/11/2022

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.RC(MD)No.780 of 2021

and

Cr1.MP(MD)No.9166 of 2021

Saravanan : Petitioner/Respondent

Vs.

1.Malathi

2.Minor Gopi Sandhu

3.Minor Santhosh : Respondents/Petitioners
(R2 and R3 represented by their
mother and next friend Malathi)

Prayer:- This Criminal Revision has been filed under sections 397 and 401 of the Criminal Procedure Code to call for the records and set aside the order, dated 27/08/2021 made in MC No.25 of 2019 on the file of the Family Court, Sivagangai and pass such further and other orders.

For Petitioner : Mr.D.Venkatachalam

For Respondents : Mr.R.Ilayaraja

**ORDER**

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This criminal revision has been filed against against the order, dated 27/08/2012¹ made in MC No.25 of 2019, on the file of the Family Court⁶, Sivagangai.

2.The facts in brief:-

The marriage between the husband and wife was performed, on 27/08/2006 as per their customary rites. At that time of marriage, the husband was working in the Police Department. After the marriage, they were living together and at that time, harassment was made by the family members of the husband seeking additional dowry, etc. The husband used to come late night in drunken mood and used to assault the wife frequently. Because of the torture, the wife suffered abortion in three times. But, on 19/12/2009, a male child was born. It was mentally retarded child. Even before the marriage, the husband was having some illicit intimacy with his brother's wife. Because of the above said, there was frequent trouble between the husband and wife. So they put up a separate residence. Even thereafter, the trouble did not stop. On 20/06/2012, the second child was born. Even at that time,



3. That was resisted by the husband stating that right from the marriage, the wife has not behaved properly and used to pick up quarrel unnecessarily. In 2013, they started living in Thirupuvanam. Even thereafter also, the wife did not change her attitude. She was also not properly taken care of the children. On 08/09/2017, she picked up quarrel during the ear-boring ceremony of two children and due to it, she went to her parental home by taking the two children. With these allegations, the husband made a complaint in Manamadurai All Women Police Station. Thereafter, the husband issued a notice to the wife for restitution of conjugal rights, on 17/05/2018. But there was no reply. The mentally retarded children was admitted in an orphanage. On coming to know about the same, the husband filed HMOP No.65 of 2019 seeking divorce. Fearing of adverse order, the wife discharged the children from the above said orphanage. Only after filing of the above said HMOP, the wife has filed a petition seeking maintenance.

4. It is also stated that the wife has completed M.Com. M.Ed., and working in a private polytechnic and earning Rs.20,000/- per month. Apart from that, she is also having ancestral properties.



5. Before the trial court, on the side of the wife, she has examined herself as PW1 and 12 documents were marked. On the side of the husband, he has examined himself as RW1 and 10 documents were marked on his side.

6. At the conclusion of the trial, the trial court directed the husband to pay a sum of Rs.5,100/- to the wife and Rs.3,050/- to the first children and Rs.4,300/- to the second children. Challenging the above said order, the present criminal revision has been preferred.

7. Pending revision, the revision petitioner was directed to deposit Rs.1,50,000/- to the credit of MC No.25 of 2019 before the Family Court, Sivagangai. The order is, dated 01/11/2021. When the matter was called, on 04/11/2022, the revision petitioner was directed to verify whether the above said conditional order has been complied or not. At that time, the learned counsel appearing for the revision petitioner sought time to get instruction. So the matter is ordered to be listed, on 10/12/2022 for final disposal. At that time, the learned counsel appearing for the revision petitioner sought time again.



8.Since it is a case of maintenance, by perusing the records, this court passes this order.

9.It is not in dispute that the revision petitioner married the first respondent and because of the marital relationship, two children born to them. Among them, one is a mentally retarded child. What went wrong between them as usual there are allegations and counter allegations.

10.It is the case of the wife that the husband is having illicit intimacy with so many women and ill-treated her and also assaulted in more than one occasions. Over the above said issue, it appears that repeated complaints have been given. Then the Superintendent of Police has also called them and made enquiry.

11.It is also seen that the police advised both of them to live together. For more than two occasions, there was a compromise between them and they lived together. But according to the wife, there was a quarrel between them on the ear-boring ceremony day of the children. So



12. There is no clear indication with regard to the above said finding in the order of the matrimonial proceedings. Now whatever it may be, it appears that both are living separately. It is also admitted that one of the children is mentally retarded.

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HMOP filed by the husband, the wife got the children discharged from the orphanage and now keeping with her. Now whatever it may be, it is seen that they have living separately and the husband has to maintain the wife and the children.

14. In the typed set of papers, the husband has also produced the copy of the documents showing the payment of the school fee, etc.

15. Now the short point arises for consideration is with regard to the income of the wife.

16. Even though, it is stated that she has completed M.Com. B.Ed., and working in a private polytechnic, there is no proof for that. With regard to the salary, there is a finding by the trial court to the effect that the total salary of the husband is Rs. 44,657/-. He also agreed to pay Rs.3,000/- to the wife and children. By noting the above said undertaking and the evidence, the trial court thought it fit to fix the above said maintenance amount, which in my considered view that cannot be considered to be excessive or luxurious in nature.



17. In the grounds of the petition, it has been stated that 1/3rd of the income can be awarded as maintenance to the wife. There can be no quarrel and it is settled position of law. But here, there are two children. One among them, as mentioned above, is mentally retarded children. So considering the above said fact, this court is of the considered view that the order of maintenance passed by the trial court cannot be considered to be excessive or luxurious in nature.

18. For all the reasons stated above, this court is of the considered view that the order passed by the trial court does not suffer from any illegality or irregularity.

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

17/11/2022

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To,
The Family Court,
Sivagangai.



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G . ILANGO VAN , J

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17/11/2022



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