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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.6216 of 2018

and

Crl.MP (MD)No.2961 of 2018

Mohammed Najeeb : Petitioner/Revision
Petitioner/Respondent
Vs.
1.Alima Beevi : Respondents/Respondents/
2.M.N.Shaw Nawas Petitioners

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in Crl.RP No.1 of 2015, dated 26.02.2018 on the file of the learned Court of Sessions, Kanyakumari District, confirmed the order passed in MC No.35 of 2013 on the file of the Chief Judicial Magistrate, Nagercoil, dated 10/12/2014 and set aside the same.

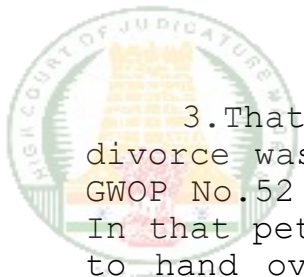
For Petitioner : Mr.N.Mohideen Basha
For Respondents : Mr.B.Brijesh Kishore

ORDER

This criminal original petition has been filed seeking quashment of the order passed in Crl.RP No.1 of 2015, dated 26.02.2018 by the learned Court of Sessions, Kanyakumari District, confirmed the order passed in MC No.35 of 2013 on the file of the Chief Judicial Magistrate, Nagercoil, dated 10/12/2014.

2.The case in brief:-

The first respondent herein married the petitioner herein on 17/05/1990 as per the customary rites. At the time of marriage, sufficient sridhana and other articles, and jewels were also provided. On 22/02/1991 a female child was born, which is followed by a male child, on 26/12/1998. After that, by taking 100 sovereigns of jewel, she was driven out of the house along with her son by the accused persons. The petitioner also illegally took the custody of the daughter. He is also having extra marital relationship with another lady. In spite of repeated demands, this petitioner did not return the gold jewels and abused the 1st respondent in filthy language. This petitioner was working as A.D.E in the Villupuram Panchayat Union and was getting a monthly salary of Rs.45,000/-. Apart from that, he is also receiving Rs.10,000/- per month from the property. Claiming maintenance amount of Rs.10,000/-, the first respondent moved MC No.35 of 2013 before the Chief Judicial Magistrate, Nagercoil @ Kanyakumari District.



3. That petition was resisted by the petitioner stating that divorce was effected by pronouncing triple talaq. He has also filed GWOP No.52 of 2012 for appointing himself as a guardian to his son. In that petition, an order was passed directing the first respondent to hand over the child to the petitioner. That was not complied with. EP No.163 of 2013 was also filed and it is pending. The other allegations are denied as false.

4. It is further stated that the first respondent is having illegal contact with one Christ Priest. His daughter was admitted in the M.I.E.T College, Trichy. The parents are also aged and he is maintaining his aged parents as well as two physically challenged brothers.

5. Upon the said pleadings, enquiry was undertaken by the trial court and after appreciating the evidence on record, directed the petitioner to pay a sum of Rs.5,000/- each to the respondents from the date of the petition. Against that order, this petitioner filed Crl.RC No.1 of 2015 before the District and Sessions Judge, Kanyakumari District @ Nagercoil. That was also came to be dismissed, by order, dated 26/02/2018. Assailing that revision, this petition has been filed.

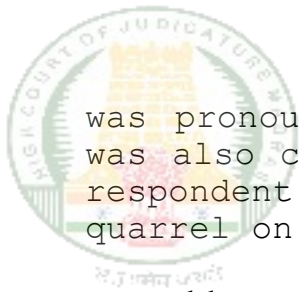
6. Heard both sides.

7. At the out set, the learned counsel appearing for the respondents would submit that this criminal original petition is not at all maintainable. According to the counsel for the respondents, there is a concurrent finding of facts by the trial court as well as the revisional court. Absolutely, no ground is available to set aside the concurrent findings of the courts below.

8. During the course of argument, it was admitted by the petitioner that his daughter is aged about 20 and still he is not in a position to get her married, because of the financial position of the petitioner. The first respondent separated herself from the petitioner some 20 years back and because of the kidney ailment and the order of termination, he is not in a position to comply the order that has been passed by this court. Even at the time of admission, a plea of bar under section 397(3) Cr.P.C has been argued, now leaving those issues, since a short point has been raised by the petitioner, I am of the considered view that this petition can be disposed of on merits.

9. Now the 2nd respondent has attained majority. So from the date of attaining majority, the 2nd respondent would not be entitled for any maintenance. In so far as the first respondent is concerned, she continue to be entitled to receive the maintenance from the petitioner.

<https://hcservices.courts.gov.in/hcservices> 10. It has been stated that as Muslim Law, triple talaq



was pronounced by the petitioner as early as on 26/12/2002, which was also confirmed by the decree in O.S No.949 of 2015, the first respondent is entitled to receive the maintenance. There can be no quarrel on that proposition.

11.Except stating that the petitioner has divorced the first respondent, no other ground has been made out for relieving the maintenance. It is the allegation against this petitioner that he was also living in adultery. It is also counter allegation made by the petitioner. Both the allegation and the counter allegation have not been proved before the trial court, which has been mentioned by the revisional court. As rightly pointed by the revisional court, by relying upon the decision of the Hon'ble Supreme Court in **Shah Bano case and Iqbal Bano case, (2007) 6 Supreme Court Cases 785**, even a divorce, the wife is entitled for maintenance. It has been observed by the revisional court that the first respondent is entitled to claim maintenance, either under the provisions of 125 Cr.P.C or section 3 of the Muslim Women (Protection of Rights on Divorce) Act. Absolutely, I find no material to differ from the view that has been expressed by the revisional court. This point was also not heavily argued at the time of argument by the learned counsel appearing for the petitioner. Even during the course of the proceedings, an attempt was made by the petitioner to stall the proceedings by filing Crl.M.P No.195 of 2014. That was dismissed. Against which, the petitioner filed revision before this court, wherein it has been observed that section 125 Cr.P.C is very well maintainable, independent of the person law. Finding that the amount, which was ordered by the trial court is very much reasonable, the revision came to be dismissed.

12.As mentioned earlier, the contention of the petitioner is that he has to maintain his aged parents and his physically challenged brothers and he is also not in a position to get the matured daughter married, cannot be a matter for consideration. Absolutely, I find no merit in this petition.

13.In the result, this criminal original petition stands **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

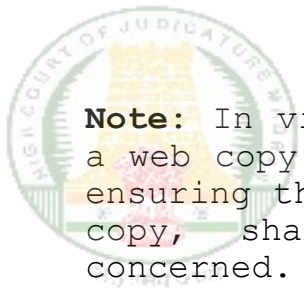
Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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To,

- 1.The District and Sessions Judge,
Nagercoil.
- 2.The Chief Judicial Magistrate,
Nagercoil.

Crl.O.P. (MD)No.6216 of 2018
02/03/2022

RD(04.05.2022) 4P 3C