



CRL.R.C.(MD).No.842 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 24.08.2022

Delivered on : 16.09.2022

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.842 of 2021

and

CRL.M.P.(MD)No.9832 of 2021

Boopathi

: Petitioner

Vs.

1.Sumathi

2.Minor.Sithaarth

3.Minor.Sabapathi

: Respondents

(Minors represented by their mother and
natural guardian/first respondent herein)

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records relating to the order dated 23.09.2021 made in M.C.No.33 of 2019 on the file of the Family Court, Sivagangai and set aside the same.

For Petitioner : Mr.T.Antony Arul Raj,

For Respondents : Mr.A.Prabhu Raj.



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ORDER

The Criminal Revision Case is directed against the order passed in M.C.No.33 of 2019, dated 23.09.2021 on the file of the Family Court, Sivagangai.

2. It is not in dispute that the marriage between the revision petitioner and the first respondent was solemnized on 06.05.2007 in Arulmighu Chozeeshwarar Temple, at Natarsan Kottai and due to their wed-lock, they were blessed with two boys minor Sithaarth and minor Sabapathi, the respondents 2 and 3.

3. It is also not in dispute that the respondents 2 and 3 were studying seventh standard and first standard respectively at the time of filing the maintenance case.

4. According to the revision petitioner, he filed a petition in H.M.O.P. No.129 of 2016, claiming divorce and that the learned Subordinate Judge, Poonamallee, vide order dated 09.02.2018 has granted divorce and thereby dissolving the marriage solemnized between the parties.



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5. But according to the first respondent, she was not at all aware of the divorce case filed by the petitioner, that no notice was served on her and that the revision petitioner by giving wrong address of the first respondent, has obtained ex-parte decree at the back of the respondents.

6. The first respondent for herself and for her minor sons, by invoking Section 125 Cr.P.C filed the maintenance case in M.C.No.33 of 2019, claiming monthly maintenance at Rs.20,000/- for the first respondent and at Rs.15,000/- each for the respondents 2 and 3, on the file of the Family Court, Sivagangai.

7. The revision petitioner has filed a counter statement by alleging that since the petitioner had already obtained divorce, he is not liable to pay any maintenance to the respondents; that the revision petitioner has already taken necessary steps, claiming custody of the respondents 2 and 3 and that therefore, the first respondent is not entitled to claim any maintenance from him. The revision petitioner has also taken a stand that he is not having any property or income and that the contention of the respondents that he is having property worth about Rs.10 Crores, is false and incorrect.



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8. The learned Judge of the Family Court, Sivagangai, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the impugned order, dated 23.09.2021, directing the petitioner to pay monthly maintenance of Rs.5,500/- to the first respondent and monthly maintenance of Rs.6,500/- each to the respondents 2 and 3 till they attain majority from the date of petition. Aggrieved by the said award of maintenance, the husband of the first respondent and father of the respondents 2 and 3, has come forward with the present revision.

9. No doubt, the revision petitioner has raised grounds challenging the finding of the trial Court regarding the petitioner's liability to pay the maintenance. But at the time of arguments, the learned counsel for the revision petitioner would fairly submit that he is only questioning the quantum of the maintenance awarded to the respondents.

10. Whether the quantum of monthly maintenance fixed at Rs.5,5,00/- to the first respondent and Rs.6,500/- each to the respondents 2 and 3 by the learned Judge of Family Court, Sivagangai in M.C.No.33 of 2019, dated 23.09.2021, is liable to be sustained or to be reduced ?



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11. The respondents have taken a stand that the petitioner had married his own sister's daughter and that without any proper reason, he had sent the respondents out of the matrimonial home.

12. No doubt, the petitioner while giving evidence before the trial Court would admit that he had married his sister's daughter as third marriage and on considering the same, the trial Court has observed that since the petitioner had married for third time, the first respondent is certainly entitled to live separately and to claim maintenance. Since the learned counsel for the petitioner would submit that they are not challenging the finding with regard to the liability of the petitioner to maintain his children, there is no need or necessity to probe further.

13. The learned counsel for the petitioner would submit that the trial Court ought to have considered the capacity of the petitioner so as to pay the maintenance amount and that the learned trial Judge has taken a mechanical view that without ascertaining the background of the financial capacity and the liability on the petitioner to maintain their family, fixed the exorbitant amount as maintenance towards the respondents.



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14. The learned counsel for the respondents would submit that in the claim petition, the first respondent has specifically stated that the petitioner is owning properties worth about more than Ten Crores at Chennai; that he is also having the properties worth about Rs.30 lakhs in his native at Vijayamanickam, that the petitioner has been running Bharath Printing Inks and he is getting monthly income at Rs.30 lakhs and that the petitioner alone has been maintaining his parents.

15. No doubt, the petitioner has specifically disputed the above aspects.

16. Admittedly, the respondents 2 and 3 are minors and are under the care and custody of their mother/first respondent.

17. It is not the case of the petitioner that the first respondent has been working somewhere and is earning good income. But, on the other hand, the first respondent has taken a specific stand that the petitioner is owning more than 10 Hectares of land and the pattas stand in the name of the petitioner. The petitioner has taken a stand that he had already alienated the said lands. But as rightly observed by the trial Court, the petitioner has not shown any reason or necessity for selling the lands in dispute.



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allowed to say that he has been maintaining his sister and her children cannot be accepted.

21. But at the same time, one portion of the income of the petitioner cannot be apportioned to the sister, but, some amount as expenditure on yearly or half yearly basis has to be kept aside for the sister's family, even though she has been receiving maintenance from her husband.

22. Now coming to the quantum of maintenance, the trial Court by taking into account that the first respondent has to spend Rs.150/- for her food three times per day, for dresses Rs.500/- and medical expenses at Rs.500/- totally Rs. 5,500/- and for the minor children towards food, it has been fixed at Rs.150/- per day and for education expenses at Rs.1,000/- ; for dresses and medical expenses at Rs.500/- each, totally Rs.6,500/- per month. The trial Court has specifically observed that the petitioner is having lot of immovable properties and that he is having necessary wherewithal to pay the maintenance.

23. On considering the means and wherewithal of the petitioner, the trial Court has rightly fixed the quantum of maintenance at Rs.5,500/- to the first respondent and at Rs.6,500/- each to the respondents 2 and 3.



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24. Considering the facts and circumstances of the case and also the status of the parties and the present economic scenario, the fixation of monthly maintenance at Rs.5,500/- to the first respondent and at Rs.6,500/- each to the respondents 2 and 3 by the learned trial Judge cannot be found fault with and the same is very much reasonable and cannot said to be excessive. Hence, this Court decides that the revision petition is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

25. In the result, this Criminal Revision case is dismissed. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

16.09.2022

Index : Yes/No

Internet : Yes/No

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K.MURALI SHANKAR, J.

das

To

1. The Judge, Family Court, Sivagangai.
2. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

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