



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21/02/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.15885 of 2019

and

Crl.MP(MD)No.9418 of 2019

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Pusphavel : Petitioner/Petitioner/Respondent

Vs.

1.Mrs.S.Anushya

2.Minor Meenakshi Sundaram

(The 2nd Respondent is a
minor rep. By his mother
and natural guardian 1st
Respondent)

: Respondent/Respondents/Petitioners

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C. to call for the the records and set aside the order passed by the Additional District Court, Srivilliputtur in Cr.R.P No.38 of 2018 on 06/09/2019 in confirming the order passed by the Judicial Magistrate Court No.II, Sattur, in MC No.35 of 2014 on 06/08/2018.

For Petitioner : Mr.M.Jothi Basu

For Respondents : Mr.J.Logaiasamy

O R D E R

This petition is filed against the order passed by the Additional District Court, Srivilliputtur in Cr.R.P No.38 of 2018 on 06/09/2019, confirming the order passed by the Judicial Magistrate Court No.II, Sattur, in MC No.35 of 2014 on 06/08/2018.

2.The case in brief:-

The first respondent and this petitioner were married to each other as per the customary rites on 23/11/2022. The second respondent was born out of the above said wedlock. Because of some sort of matrimonial dispute between the parties, the petitioner filed HMOP No.107 of 2014 before the Sub Court, Sivakasi and that was pending on the date of the above said petition. Because of the matrimonial dispute, the 1st respondent along with her child was residing separately and the petitioner who is the husband the first respondent did not take care to provide maintenance to her as well as the child.

3.Seeking maintenance amount of Rs.10,000/- and Rs.5,000/- respectively, the respondents filed MC No.35 of 2014 and that was

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allowed by the jurisdictional Magistrate, by order, dated 06/08/2018. Against that order of granting maintenance, this petitioner preferred appeal in Cr.R.P.No.38 of 2018 before the revisional court. That also came to be dismissed, by order, dated 06/09/2019 as stated above.

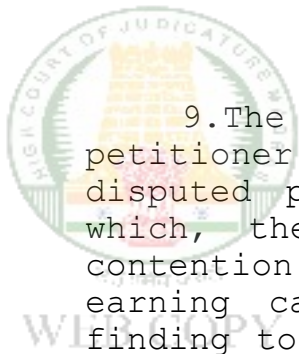
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4. Against the concurrent findings of both the courts below, the petitioner, who is the husband, preferred this criminal original petition.

5. Heard both sides.

6. This court, while entraining this petition on 04/11/2019, directed the petitioner to pay arrears amount in the scheduled manner. He was directed to pay the amount in three instalments. The arrears amount found to be paid is Rs. 1,80,000/-. Out of the above said amount, Rs.80,000/- was paid and the remaining balance of Rs.1,00,000/- has to be paid by the petitioner and the amount was ordered to be paid in three instalments starting from 30/1/2019 ending with 3/02/2020. But whether that order has been complied or not, there is no clear evidence on record. 7. It is the concurrent finding of the courts below as noted above. The ground on which, the petitioner resisted the above said claim is that the first respondent was working as staff nurse in a private hospital and used to stay away from the matrimonial home frequently and now she deserted the petitioner and the petitioner is always ready and willing to live with the family. But that ground came to be rejected by the trial court as well as the revisional court and also the finding to the effect that this petitioner is having some sort of extra marital relationship. That was objected by the petitioner, because of the above said problem only they are living separately and trouble arose between them. The divorce petition that was filed by the petitioner was also dismissed by the concerned court on 05/04/2014. It has been admitted by the petitioner that that petition came to be dismissed on the ground that there was no substance in the petition. Similarly he has also filed O.S No.9 of 2017 before the Judicial Magistrate No.1, Sattur and that was also came to be dismissed.

8. It is also seen that before initiation of the above said maintenance proceedings, the complaint was given by the first respondent and enquiry was undertaken by the police. What happened in the above said enquiry is not clear on record. So it is seen that only because of the above said alleged extra marital relationship, trouble arose between the first respondent and the petitioner. So the contention on the part of the petitioner that the first respondent only deserted him and living separately is not at all established and the first petitioner has got every reason to live separately. So the petitioner cannot be permitted to take advantage of his own wrong and this ground also fail.



9.The second ground is that she filed a petition to subject the petitioner and the 2nd respondent to undergo DNA test, since he disputed paternity, that petition came to be dismissed. Against which, there was no appeal or any revision. So that sort of contention went against the petitioner. Similarly with regard to earning capacity of the first respondent also, there is clear finding to the effect that the first respondent was not working on the date of the petition in the Star Hospital at Sivakasi. So the this contention is also not available as of now.

10.It is admitted that the petitioner is working as Mechanic. Being a Mechanic and able person, both physically and mentally, is bound to maintain the respondents. I absolutely find no material placed on record by the petitioner to differ from the view that has been taken by the trial court as well as the revisional court.

11.So,I find no merit in the petition and accordingly, this petition deserves dismissal and it is dismissed, confirming the orders passed by the trial court and revisional court. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CRL)

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/ /2022

Sub Assistant Registrar(CS)

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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 Additional District Court,
Srivilliputhur.

2.The Judicial Magistrate Court No. II, Sattur.

+1 CC to M/s.T.LOGAIASAMY, Advocate (SR-7645[F] dated 22/02/2022)

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-7699[F] dated 22/02/2022)

ORDER MADE IN

Crl.O.P. (MD)No.15885 of 2019

21.02.2022

PKP/08.03.2022/3P/5C

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