



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:29/03/2022

CORAM:

THE HON'BLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.20838 of 2018

and

Crl.MP(MD)No.9623 of 2018

A.Iruthayarajan : Petitioner/Petitioner/
Respondent

Vs.

V.Selva Anitha : Respondent/Respondent/
Petitioner

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order, dated 28/09/2018 passed in the Revision Petition No.23 of 2017 on the file of the Principal Sessions Court, Kanyakumari District @ Nagercoil, confirming the order, dated 03/07/2017 passed in MC No.28 of 2015 on the file of the Chief Judicial Magistrate, Nagercoil, Kanyakumari District.

For Petitioner : Mr.P.Pragalathan

For Respondent : Mr.S.Palanivelayutham

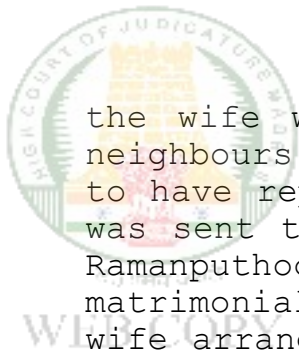
O R D E R

This criminal original petition is filed seeking in order to set aside the order, dated 28/09/2018 passed in the Revision Petition No.23 of 2017 on the file of the Principal Sessions Court, Kanyakumari District @ Nagercoil, confirming the order, dated 03/07/2017, passed in MC No.28 of 2015 on the file of the Chief Judicial Magistrate, Nagercoil, Kanyakumari District.

2.The facts in brief:-

The marriage between the petitioner and the respondent took place, on 16/05/2013 as per the religious customary rites. At the time of marriage, the respondent was provided with gold jewels, apart from Car and house-hold articles. The petitioner alleged to have demanded the jewels for the purpose of developing his business. So 31-1/2 sovereigns of gold jewels was given to the petitioner. That was not returned back. When that was questioned, she was beaten up. The petitioner also demanded additional dowry. On 23/10/2013,

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the wife was confined in a dark room without any food. When the neighbours questioned the same, at the time, the petitioner alleged to have replied that his wife is suffering from mental illness. She was sent to the parental home. After that, the wife is residing in Ramanputhoor at her parental home. She was driven out of the matrimonial house demanding Rs.2,00,000/-. So the parents of the wife arranged Rs.2,00,000/- and paid the same to the petitioner, on 16/11/2013. At that time, the petitioner alleged to have promised that he will not give trouble to the wife. But against his promise, he started harassing the wife. On 22/02/2014 the petitioner, his mother, his brother and sister-in-law attempted to kill the wife. The petitioner is also addicted to liquor. She was deserted, on 22/02/2014 and claiming compensation amount of Rs. 50,000/- per month, so she made a petition, which was also allowed by the trial court, directing the petitioner herein to pay a sum of Rs.5,000/- per month towards maintenance. Against which, he has also filed revision before the Principal District Judge, Kanyakumari in Revision Petition No.23 of 2017. That was also came to be dismissed. Against which, this petition has been filed.

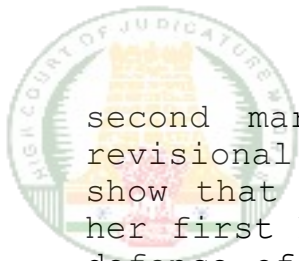
3.The claim of the respondent was resisted by the petitioner before the trial court as well as the revisional court on the ground that there was voluntary desertion on the part of the respondent within a week from the date of the marriage and she is a working lady, receiving sufficient income from the properties and also receiving compensation from the first husband. This petitioner, being the physically challenged person, having no work and is not able to maintain himself. Those grounds were rejected by the trial court as well as by the revisional court.

4.The correctness of the concurrent findings are challenged in this revision.

5.Heard both sides.

6.The learned counsel appearing for the respondent made objection to the effect that the revision, that was filed by the petitioner came to be dismissed by the Principal District Judge, Kanyakumari District, in Revision Petition No.23 of 2017, by order, dated 28/09/2018. So there is a concurrent finding, not only the trial court, but also the revisional court. When that is being so, the second revision was filed in the form of this petition under section 482 Cr.P.C may not lie.

7.No doubt that this petition may amount to second revision. But however, the learned counsel appearing for the petitioner would submit that two important factors have to be taken by the trial court as well as the revisional court. One is that the respondent was already married to some other person and there was no proper legal separation. Without getting proper legal divorce, by



second marriage. But however, the trial court as well as the revisional court concluded that absolutely, there is no record to show that there was any proper legal divorce between the wife and her first husband. In the absence of any documentary evidence, the defence of the respondent that she got legal divorcé from the first husband, that was the plea. I find no reason to differ from the said view. So that plea cannot be raised once again before this court.

8.The second ground is that the petitioner is 90% physically challenged person. According to the petitioner, this was not properly taken into account by the trial court as well as the revisional court. It is a basic and fundamental principle of maintenance law that disability or inability of the husband cannot be taken into account and that person cannot take a plea that because of his inability, he is not entitled to pay the maintenance to the wife. Such a plea cannot be raised and accepted.

9.As pointed by the trial court, it is a case of the petitioner that he was not 100% disability. So the contention on the part of the petitioner that he is not able to maintain himself cannot a matter for consideration and reason for denying maintenance. So taking into totality of the circumstances of the case, the trial court has ordered payment of Rs.5,000/- per month. In the present economic situation, this court is of the view that Rs.5,000/- ordered towards maintenance cannot be construed to be excessive. So, I find no merit in this petition and accordingly, it is liable to be dismissed.

10..In the result, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petition is closed

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /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 Principal Sessions Judge,
Kanyakumari District @ Nagercoil.

2.The Chief Judicial Magistrate,
Nagercoil, Kanyakumari District.

+1 CC to M/s.N.PRAGALATHAN, Advocate (SR-15206[F] dated
29/03/2022)

+1 CC to M/s.S.PALANIVELAYUTHAM, Advocate (SR-15241[F] dated
30/03/2022)

Crl.O.P. (MD)No.20838 of 2018
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MK/18.05.2022/4P/5C