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C.R.P.No.409 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 17.03.2023

Delivered On : 30.06.2023

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.409 of 2021

and

C.M.P.No.3476 of 2021

S.Bhuvaneswari : Petitioner/Respondent/Petitioner

-vs-

Dr.J.Jegadeesan : Respondent/Petitioner/Respondent

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, praying to set aside the order dated 18.11.2020 made in I.A.No.21 of 2008 in H.M.O.P.No.28 of 2007 on the file of the learned Subordinate Judge, Mettur, by allowing the above Civil Revision Petition.

For Petitioner : Mr.A.V.Arun
For Respondent : Ms.J.Shakila
for Mr.S.Dharmaraj

ORDER

This Civil Revision Petition had been filed seeking to set aside the order dated 18.11.2020 made in I.A.No.21 of 2008 in H.M.O.P.No.28 of 2007 on the file of the learned Subordinate Judge, Mettur.

2.The Revision Petitioner is the wife. The husband had filed HMOP



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No.28 of 2007 before the Sub Court, Mettur, seeking divorce against the wife on the ground of cruelty. The HMOP No.28 of 2007 was filed in the year 2007. At that stage, the child born to the Revision Petitioner and the Respondent in the Revision Petition was aged 5 years. Therefore, the wife filed I.A.No.21 of 2008 under Section 24 of the Hindu Marriage Act, 1955 seeking maintenance for herself and the child. The Respondent in this Civil Revision Petition, who is the Petitioner in HMOP No.28 of 2007 and the Respondent in I.A.No.21 of 2008 under Section 24 of the Hindu Marriage Act, 1955, had filed counter disputing the contention of the Petitioner/Wife in I.A.No.21 of 2008.

3.After due enquiry, the learned Sub Judge, Mettur, had dismissed the I.A.No.21 of 2008 stating that the Wife/Petitioner in I.A.No.21 of 2008 filed under Section 24 of the Hindu Marriage Act, 1955, is employed as a Sanitary Inspector under the State Government and she had sufficient means to support herself and the child, therefore, dismissed the Interlocutory Application. It is the contention of the learned Counsel for the Revision Petitioner/Wife that the husband is duty bound to maintain the wife. The wife had filed maintenance case in M.C.No.43 of 2016 before the Family



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Court, Salem, seeking maintenance. The learned Judge, Family Court, Salem, had after due enquiry, ordered maintenance of Rs.5,000/- per month by the husband/father of the child to be paid to the minor child. Now, the five year old child is aged about 18 years and undergoing studies as first year Engineering Course. It is the contention of the learned Counsel for the Revision Petitioner/Wife that the Wife had been staying in a rented house and has been paying rent. Her parents are aged and hence, she has to support her aged parents along with the child. Therefore, even though she is employed, she is unable to meet out the entire expenses. The Respondent/Husband is employed as Professor in SRM University and he had not stated anything in the counter except disputing the claim of the Petitioner. The learned Sub Judge, Mettur, without considering the fact that the husband is duty bound to maintain the wife and child, had dismissed the petition for maintenance filed by the wife stating that the wife is employed in Government service and she can maintain herself. Aggrieved by the same, the wife, who is the Petitioner in I.A.No.21 of 2008 filed under Section 24 of the Hindu Marriage Act, had approached this Court by filing this Civil Revision Petition seeking to set aside the order of dismissal of the learned Sub Judge, Mettur, in I.A.No.21 of 2008 in H.M.O.P.No.28 of 2007, dated 3/12



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18.11.2020.

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4.It is the further contention of the learned Counsel for the Revision Petitioner/Wife that as per the latest judgment of the Hon'ble Supreme Court reported in **(2021) 2 SCC 324 [Rajnish -vs- Neha and another]**, in cases of this nature, the husband has to furnish an affidavit along with the details of the properties and the details of the income and a format is also given in the very same judgment. After pronouncement of this judgment, it was stated in the very same judgment that it is applicable to all pending cases in Courts throughout India. Therefore, to take judicial notice of the same, the learned Counsel for the Revision Petitioner had filed memo before the Court of the learned Sub Judge, Mettur, the same was not at all considered by the learned Sub Judge, Mettur.

5.By way of reply, the learned Counsel appearing for the Respondent Ms.J.Shakila submitted that it is a well considered order. The learned Counsel appearing for the Respondent invited the attention of this Court to the HMOP filed in the year 2007 seeking decree of divorce against the wife for cruelty meted out to him and to his parents, she had foisted false cases



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under Section 498A of IPC and Section 4 of Dowry Prohibition Act which culminated in the arrest of the Respondent/Husband, his parents and brother and sisters. Subsequently, they were released on bail. In the course of the trial, the mother of the Respondent died due to mental strain and shock caused by the criminal case foisted on her and its repercussions on her health. Also, the same had resulted in the Respondent/Husband losing his job as Lecturer who was working in Annai Madhammal Sheela Engineering College, Erumaipatty. Therefore, the contention of the learned Counsel appearing for the Revision Petitioner that the content of the counter is silent regarding his job and he is employed as a Professor in SRM University will not hold good wherever he was employed the wife/Petitioner herein used to give torture by preferring a complaint against him before his higher officials and thereby caused torture on him which is a ground for seeking divorce on the ground of cruelty. When he had filed HMOP No.28 of 2007, the wife filed another HMOP seeking restitution of conjugal rights. She was earlier working as Sanitary Inspector drawing salary of Rs.51,000/-Subsequently, she was promoted and she is now earning Rs.65,000/- per month. The husband/Respondent herein, in obedience of the order passed in the maintenance case before the Court of the learned Judicial Magistrate at

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Salem, had been depositing regularly which had accumulated to

Rs.2,00,000/- (Rupees Two Lakhs only) by now. She has not withdrawn

any of the amount from the Court of the learned Judicial Magistrate, Salem.

It is her only intention to protract the case and cause mental torture to the

husband whenever a case is taken up for disposal, she files a Petition to

recall the witness or to re-open the case. It is the further contention of the

learned Counsel for the Respondent that the attempt of the wife for interim

maintenance was dismissed similarly by the learned Judge against which she

filed CRP No.778 of 2017 which was also allowed. Similarly, she filed a

Transfer Original Petition seeking withdrawal of the HMOP from the file of

the learned Sub Judge, Mettur to be transferred to Trichy only with an

ulterior motive to protract the proceedings which was vehemently resisted by

the husband/Respondent herein based on which the Transfer Original

Petition was also dismissed. It is the contention of the learned Counsel for

the Respondent that till date she had not allowed the enquiry/trial in HMOP

No.28 of 2007 to conclude. The learned Counsel for the Respondent also

invited the attention of this Court to the observation of the learned Judge in

the order passed in I.A.No.21 of 2008 dismissing the I.A.No.21 of 2008

filed under Section 24 of the Hindu Marriage Act, 1955 by observing that



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the wife had been protracting the proceedings by filing petition and not co-operating to proceed with the evidence. Also, the learned Counsel appearing for the Respondent invited the attention of this Court to Section 24 of the Hindu Marriage Act, 1955 wherein it is stated that if the wife does not have sufficient means to maintain herself herein it had been stated by the learned Judge that she is employed in Government service and getting a decent pay. Therefore, he had arrived at a just conclusion as per Section 24 of the Hindu Marriage Act, 1955 and rejected the claim of the Petitioner/Wife for maintenance. The order of the learned Judge, Mettur dismissing IA.No.21 of 2008 in HMOP No.28 of 2007 is as per Section 24 of the Hindu Marriage Act, 1955, for which the rulings placed reliance by the learned Counsel for the Revision Petitioner in the case of *Rajnesh -vs- Neha and another* reported in **(2021) 2 SCC 324** is not at all applicable and hence, it deserves to be rejected. The order dismissing the claim of maintenance is a well reasoned order which need not be interfered with by this Court as it does not warrant any interference by this Court. Therefore, this Civil Revision Petition is to be dismissed as not maintainable with a direction to the learned Judge of the trial Court to dispose of the HMOP No.28 of 2007 within a



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reasonable period of two months from the date of receipt of a copy of this order.

6. Point for consideration:

Whether the order dated 18.11.2020 made in I.A.No.21 of 2008 in H.M.O.P.No.28 of 2007 on the file of the learned Sub Judge, Mettur is to be set aside?

7. On perusal of the order passed by the learned Sub Judge, Mettur, the affidavit of the Petitioner/Wife, the Counter filed by the Respondent/Husband and the ruling cited by the learned Counsel for the Revision Petitioner and the order passed by the learned Judge, the order passed by the learned Judge is found to be a well reasoned order. As rightly pointed out by the learned Counsel for the Respondent that the Petitioner's claim was based on Section 24 of the Hindu Marriage Act, 1955. When the wife does not have means to support herself only, she can seek maintenance under Section 24 of the Hindu Marriage Act, 1955. When the Husband/Respondent herein lost his job due to the arrest and detention and subsequent complaint given by her also resulted in his successive job having been lost, the Wife/Petitioner having a permanent job and income is not entitled to seek maintenance as per Section 24 of the Hindu Marriage Act,



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1955. The reasoned order of the learned Sub Judge, Mettur who had considered the pendency of HMOP for quiet long time and the conduct of the party before the Court the party who indulged in delaying tactics/dilatory tactics had been mentioned in the order of the learned Sub Judge, Mettur. Whenever the trial Court proceed with HMOP for evidence, at that stage, the wife as Respondent indulges in similar activities, which is found in the order of the learned Sub Judge, Mettur. The submission of the learned Counsel for the Revision Petitioner that the wife had filed IA No.3 of 2020 to summon documents from the SRM University was rejected by the learned Judge stating that under the Civil Rules of Practice, the documents can be summoned by the Court. Therefore, the well reasoned order does not warrant any interference by this Court.

8.Further, when the Husband/Respondent herein had filed a petition for divorce in 2007 it is to be presumed that the wife had protracted the proceedings from 2007 till 2023 nearly 16 years thereby causing mental torture to the husband, the contention of the learned Counsel for the Respondent cannot be rejected lightly considering the fact that this Petition was ordered only in 2020 and the petition was filed in the year 2008. The submission of the learned Counsel for the Revision Petitioner that the

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husband has to furnish affidavit and particulars of the properties and income as per the Format given in the ruling cited by him also does not hold good in this case as the petitioner wife is getting regular income from her Government job whereas her husband/Respondent herein had lost his job due to the arrest and detention.

9.I.A.No.127 of 2014 was filed by the husband only for framing issues and not for interim maintenance. The learned Sub Judge, Mettur allowed the petition. Against that, the wife filed C.M.A.No.4 of 2016. The said C.M.A.No.4 of 2016 was dismissed confirming the order passed by the learned Sub Judge, Mettur in I.A.No.127 of 2014, dated 30.10.2015. Against the order of dismissal dated 20.07.2016 passed by the learned Principal District Judge, Salem, in C.M.A.No.4 of 2016, the wife had filed C.R.P.(PD) No.778 of 2017. That Civil Revision Petition was allowed.

10.In view of the above discussion, the point for consideration is answered in favour of the Respondent and against the Revision Petitioner. The order dated 18.11.2020 made in I.A.No.21 of 2008 in H.M.O.P.No.28 of 2007 on the file of the learned Sub Judge, Mettur is to be confirmed.



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In the result, **this Civil Revision Petition is dismissed.** The order dated 18.11.2020 made in I.A.No.21 of 2008 in H.M.O.P.No.28 of 2007 on the file of the learned Sub Judge, Mettur is confirmed. The learned Sub Judge, Mettur, is directed to dispose of H.M.O.P.No.28 of 2007 within a period of three months from the date of receipt of the copy of this order or on uploading the order in the website of this High Court. No costs. Consequently, the connected miscellaneous petition is closed.

30.06.2023

SRM

Index : Yes / No

Internet : Yes / No

Speaking Order / Non-Speaking Order

SATHI KUMAR SUKUMARA KURUP., J.

SRM

To

- 1.The Sub Judge,
Mettur.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.

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**Order made in
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30.06.2023