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Crl.R.C.No.272 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.RC.No.272 of 2018

and Crl.M.P.No.3057 of 2018

N.Baskaran

... Petitioner/Respondent

Vs.

Vennila

... Respondent/Respondent/Petitioner

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 Criminal Procedure Code, to set aside the order dated 18.12.2017 made in F.C.M.C.No.43 of 2016 on the file of the Family Court, Dharmapuri.

For Petitioner : Mr.V.R.Annagandhi

For Respondent : Mr.B.Vijayakumar

ORDER

This Criminal Revision Petition had been filed to set aside the order dated 18.12.2017 made in F.C.M.C.No.43 of 2016 on the file of the Family Court, Dharmapuri.



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2. The learned Counsel appearing for the Revision Petitioner submitted that the learned Judge, Family Court, had dismissed the petition filed by the wife seeking restitution of conjugal rights. The very same Judge had ordered maintenance in F.C.M.C.No.43 of 2016. The learned Counsel for the Revision Petitioner invited the attention of this Court to the evidence of the daughter of the Revision Petitioner and Respondent as R.W.2, which was discussed by the learned Judge in Paragraph Nos.64 to 67, and also invited the attention of this Court, to the additional typed set filed by the Revision Petitioner, and to the deposition of the Respondent as Petitioner in F.C.H.M.O.P.No.1 of 2019 and to the cross examination of the Respondent in F.C.H.M.O.P.No.1 of 2019. It is the submission of the learned Counsel for the Revision Petitioner that the wife/Respondent in this Revision Petition had herself admitted that she is employed in Senthil CBSC Matriculation School and is earning gross salary of Rs.6,000/- per month and she is able to pay rent for the house of Rs.5,000/-. Further, the learned Counsel for the Revision Petitioner relied upon the rulings reported in **2002-3-L.W. 594** in the case of ***Kumaresan Vs. Aswathi***. The relevant portion of the order reads



as follows:

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"2.In the affidavit filed in support of the applications, respondent has stated that the petitioner is an employee of BHEL, Trichy and getting a regular and fabulous income of Rs.60,00/- per annum and that taking into consideration the claims made by her are quite reasonable, those applications may be ordered.

7. This Court perused the materials available on record. The petitioner has in fact, in paragraph 6 of the affidavit filed in support of I.A. No.275 of 1999, has categorically stated that the respondent is working in Khadi Board and drawing a salary of Rs.4,500 per month. Normally speaking, he could have summoned the concerned official from that department, who would have placed before the Court the required materials. It is not known as to why the respondent/ wife, even after receiving notice from the Court, has not turned out. In the circumstances of this case, this Court feels that it might be that she has not appeared before the Court so that, she can avoid divulging about her employment in Kadhi Board to this Court. In fact, in the revision petition also petitioner has raised a specific ground that the respondent is employed in Kadhi Board. Even though, normally this Court will not come to the rescue of the litigant who failed to reasonably prosecute the matter, that is to say in this case, marking appointment order or salary certificate or summoning the concerned official from the Kadhi Board, this Court in the peculiar facts and circumstances of the case is inclined to give one more chance to the petitioner/ husband to prove his claim viz., the respondent/ wife is employed in Kadhi Board, BHEL, Trichy"

3. As per the submission of the learned Counsel for the Revision



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Petitioner, the order passed by the learned Family Judge, Dharmapuri, in F.C.M.C.No.43 of 2016 granting Rs.10,000/- per month as maintenance to the Respondent/wife cannot be sustained as she has independent source. Further, the Revision Petitioner has to support his age old parents. Therefore, she seeks to set aside the order passed by the learned Judge, Family Court, Dharmapuri, in F.C.M.C.No.43 of 2016. It is the submission of the learned Counsel for the Revision Petitioner that the learned Judge had not considered the materials available before him and the evidence available before him.

4. The learned Counsel for the Respondent/wife invited the attention of this Court to page No.31 of the typed set which is the deposition of R.W.3 Jayakumar who is the Administrative Officer of the School where the Respondent/Wife was alleged to have been working. It is the submission of the learned Counsel for the Respondent/Wife as per the evidence in cross examination of R.W.3 the Respondent/Wife had already given resignation letter on account of Health issues. Further, he had submitted that she was employed as a Teacher on a daily rate basis. Therefore, the contention of the learned Counsel for the Respondent that the



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Respondent has independent source of income is not proved. Further, the learned Counsel for the Respondent invited the attention of this Court to the evidence of the daughter of the Revision Petitioner and the Respondent as well as the evidence of the Revision Petitioner as R.W-1 and wherein in the cross examination he had stated that he had not convened any Panchayat in the Village level regarding the wayward life or the immoral life of the wife. Therefore, the allegation that the Wife is not entitled to maintenance is made only on the ground that she is leading immoral life or wayward life. Therefore, the learned Counsel invited the attention of this Court to the discussion in the order passed by the learned Judge, Family Court, Dharmapuri, granting maintenance of Rs.10,000/- per month and medical expenses of Rs.30,000/- per year. Therefore, it is submission of the learned Counsel for the Respondent/Wife that the order of the learned Judge, Family Court, Dharmapuri, is a well reasoned order on proper assessment of the materials available before the learned Judge, Family Court, Dharmapuri. This Revision Petition does not have merits and hence, to be dismissed.

5. On consideration of the rival submission and on perusal of the



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evidence of R.W-1/Husband before the Family Court, evidence of R.W-2/daughter of the Revision Petitioner and the Respondent, the evidence of R.W-3 the Administrative Officer of the School wherein the Respondent/Wife is alleged to have been in employment and order passed by the learned Judge and the ruling relied upon by the learned Counsel for the Revision Petitioner. The order passed by the learned Judge is on proper appreciation of the materials available before the learned Judge. The learned Judge, Family Court had rejected the contention of the Revision Petitioner/Husband as Respondent before the Family Court, Dharmapuri that the Wife is not entitled to maintenance as she is leading wayward life. In cases under 125 Cr.P.C the Petitioner/Wife is not entitled to claim maintenance if the husband is able to prove that his wife is leading immoral life or adulterous life. Here, the learned Judge, on the basis of the evidence available before him had rejected the compact disc filed as Ex.R-1 by the husband under Section 65 of the Indian Evidence Act as far as Information Technology Act stating that there is no certificate obtained from the Competent Authority. Also that it was not obtained or furnished on from any lawful authority. In the absence of specific pleadings regarding adulterous



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life, the learned Judge had rejected the attempt of the husband as Respondent before the Family Court, to refuse payment of maintenance. As rightly contended by the learned Counsel for the Respondent before this Court that the husband in his cross examination as R.W-1 admitted that he had not convened any panchayat in the Village regarding adulterous life of his wife. The learned Judge had specifically observed that in today's life style the mere allegation that the woman riding pillion with a man cannot be construed as immoral or the woman speaking on mobile with a man cannot be construed as adulterous. The Revision Petitioner before this Court as Respondent before the learned Judge, Family Court, Dharmapuri, had examined his daughter as R.W-2 making allegations against the mother as though she is living in adulterous life. In the cross examination the daughter, who had attained age of majority, was unable to give specific details with whom the mother had adulterous life, with whom she had rode pillion and with whom she had been in regular contact through mobile phone. Therefore, the learned Judge, Family Court, Dharampuri, had elaborately discussed the evidence before him and had rejected the contention of the husband as a feeble attempt to reject the claim of maintenance. The learned Judge had fairly



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appreciated the evidence and the circumstances of the case. On considering the fact that he had dismissed the claim of the Wife for restitution of conjugal rights. That cannot be the ground to deny the Wife, her lawful claim of maintenance in the absence of independent income. The ruling cited by the learned Counsel for the Revision Petitioner is with regard to the fact where, the wife in the reported ruling was employed in Khadi Board which is a State Controlled Organization whereas the evidence before the trial Court in Family Court, Dharmapuri, the evidence of the daughter as well the husband was that the Wife is employed in a Private School. It is known fact that through out the State of Tamil Nadu there are very many Private School teachers who were highly qualified in the category of M.A. M.Ed., M.com M.Ed. are paid meagre Salary of Rs.5,000/- or Rs.6,000/-. The wife as P.W.1 in F.C.H.M.O.P.No.1 of 2019 had clearly stated that she was drawing salary of Rs.6,000/-. That cannot be the ground to reject her claim for maintenance. In the evidence of the daughter as R.W-2 had admitted that her father, the Respondent in this maintenance case was serving as Head Master of Government School. In the light of the specific admission the order passed by the learned Judge, Family Court, Dharmapuri, granting Rs.10,000/-



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cannot be considered as high. The Head Master of Government School will be drawing not less than Rs.1,00,000/- per month whereas, the learned Judge had granted Rs.10,000/- only per month to the wife, along with Rs.30,000/- per year towards her medical expenses. The order passed by the learned Judge, Family Court is found reasonable. In the absence of an appeal by the wife, this Court is unable to grant enhancement of the maintenance. In the light of the above, the rulings cited by the learned Counsel for the Revision Petitioner is not applicable to the facts of this case. In the light of the above discussion, this Court is of the opinion that the order passed by the learned Judge is a well reasoned order. The Revision Petition is dismissed as having no merits.

6.Accordingly, this Criminal Revision Case stands dismissed.

Consequently, connected miscellaneous petition is closed.

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