



Crl.R.C.No.900 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Crl.R.C.No.900 of 2023 &

Crl.M.P. No.7343 of 2023

M. Ema Gandhi

...Petitioner

Vs.

1. G. Nagarani

2. Minor Jayaprakash

... Respondents

Prayer : Criminal Revision Petition filed under Section 397 read with 401 Cr.P.C. against the order passed in M.C. No.13 of 2015 on the file of the District Munsif cum Judicial Magistrate Court, Ambur, dated 21.01.2021.

For Petitioner : Mr.B. Lenin Balu

For Respondent : No apperance

ORDER

The present Criminal Revision Petition is filed against the orders passed in M.C. No.13 of 2015 on the file of the District Munsif cum Judicial Magistrate, Ambur, dated 21.01.2021.



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2. The revision petitioner is the respondent in M.C.No.13/2015 on the file of the District Munsif cum Judicial Magistrate, Ambur. The respondents filed the said petition under Section 125 Cr.P.C. seeking maintenance of Rs.10,000/- per month from the present revision petitioner.

3. The facts of the case in nutshell are as follows:

- i. The 1st respondent/1st petitioner and the respondent got married on 21.11.2012 and through wedlock the 2nd respondent/2nd petitioner was born to them.
- ii. According to the 1st respondent/1st petitioner, she was ill treated by her husband as well as by his sisters and therefore she had to leave her matrimonial home with her child (2nd respondent/2nd petitioner) and that she is presently living with her parents.
- iii. The 1st respondent is unable to maintain herself and her child and therefore she filed a petition in M.C.No.13/2015 on the file of the District Munsif cum Judicial Magistrate Court, Ambur, seeking for



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a maintenance of Rs.5,000/- each to her and her child.

iv. The present revision petitioner filed a counter in which it is stated that the 1st respondent/1st petitioner is doing her own business and is earning a sum of Rs.10,000/- per month and that the 1st respondent did not take care of him. According to him, the 1st respondent never cooked food at home and therefore he (revision petitioner) was made to starve always. He therefore, prayed for dismissal of the abovesaid petition filed by the respondents/petitioners.

4. In the trial court, the 1st petitioner examined herself as P.W.1 and marked Ex.P1 to Ex.P6. The revision petitioner/respondent examined himself as R.W.1. However, no documentary evidence was adduced on his side.

5. After analysing the oral and documentary evidence adduced on both sides, the learned District Munsif cum Judicial Magistrate, Ambur, concluded that the present revision petitioner is liable to pay a



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sum of Rs.1,500/- to the 1st petitioner and Rs.2,500/- to the 2nd petitioner towards maintenance on or before 5th of every English Calendar month, vide her orders dated 21.01.2021.

6. Now, the present Criminal Revision Petition is filed by the respondent in M.C. No.13/2015 against the order.

7. Heard Mr.B. Lenin Balu, learned counsel for the revision petitioner and there is no representation on behalf of the respondents.

8.Mr.B. Lenin Balu, learned counsel for the revision petitioner contended that the revision petitioner is now inside the prison for non payment of maintenance amount and that he never worked and earned any amount. It is his further submission that when the 1st respondent is doing her own business and earning a sum of Rs.10,000/-, there is no necessity for the present revision petitioner to maintain her and her son.



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9. The learned District Munsif cum Judicial Magistrate, Ambur, after analysing the oral and documentary evidence adduced on both sides concluded that the evidence on record shows that the present revision petitioner used to ill treat his wife (1st respondent) and therefore she had to leave the matrimonial home. The learned trial court judge, had also considered the counter filed by the revision petitioner/respondent in which it is stated that the 1st respondent/1st petitioner was doing her own business and earning a sum of Rs.10,000/- per month. The trial court judge further quoted the decision in ***Shamima Farooqui vs Shahid khan*** reported in ***2015 5 SCC 705*** wherein it has been held thus:

"18. In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in Chander Parkash Bodh Rajv. Shila Rani Chander Prakash [1968 SCC OnLine Del 52 : AIR 1968 Del 174] wherein it has been opined thus : (SCC OnLine Del para 7)



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7. ... *an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him."*

Moreover, the trial court judge had considered the object of the provision of Section 125 Cr.P.C in her judgment and came to a conclusion that the revision petitioner is liable to pay a sum of Rs.4,000/- towards maintenance to the respondents/petitioners. The trial court judge, by a well written judgment, had considered all the aspects of the case and there is no reason to interfere with the same. Accordingly, the Criminal Revision Petition is liable to be dismissed.



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10. In the result,

i. the Criminal Revision Petition is dismissed. No costs.

Consequently connected miscellaneous petition is closed.

ii. the orders passed in M.C. No.13 of 2015 on the file of the District Munsif cum Judicial Magistrate Court, Ambur, dated 21.01.2021, is confirmed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The District Munsif cum Judicial Magistrate, Ambur,



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R. HEMALATHA, J.
bga

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