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CrI.R.C.No.811 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.R.C.No.811 of 2020
and
CrI.M.P.No.5685 of 2020

Arokiya Doss Simon ... Petitioner/Respondent/Respondent

-Vs-

1.P.Mary Pramila
2.Merlin Jones (Minor Aged 12 years)
Rep. by her mother and natural guardian
Both residing at No.756, Block No.136,
T.P.C. Main Road, Shenoy Nagar,
Chennai – 600 030. ...Respondents/Petitioners/Petitioners

Prayer:- Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C, to call for records in M.P.No.218 of 2019 in M.C.No.548 of 2010 on the file of the learned III Additional Principal Judge, Family Court, Chennai and to examine the same and to set aside the order passed in M.P.No.218 of 2019 on 17.02.2020 under Section 127 of Cr.P.C

For Petitioner : Mr.V.Ramamurthy
for Mrs.K.Malathi

For Respondents : Mr.S.Saravanan



CrI.R.C.No.811 of 2020

ORDER

WEB COPY This Criminal Revision Case is filed to set aside the order passed by the learned III Additional Principal Judge, Family Court, Chennai, in M.P.No.218 of 2019 in M.C.No.548 of 2010 dated 17.02.2020.

2. Learned Counsel for the Revision Petitioner submits that on the earlier occasion, when the case came up for hearing, he offered to settle the retirement benefits of Rs.14,67,382/-. At that time, the learned Counsel for the Respondents/wife also present in Court accepted the likelihood of settlement. Therefore the case was adjourned from 24.11.2023 to 01.12.2023, expecting for an amicable settlement.

3. Today, 01.12.2023, when the case came up for hearing, the learned Counsel for the Revision Petitioner submitted that the wife is not amenable to this offer of Rs.9,00,000/-, as Rs.6,00,000/- + Rs.3,00,000/- = Rs.9,00,000/-. Therefore, he wanted to proceed with the argument.

4. Learned Counsel for the Revision Petitioner/husband submitted that he joined the service in the Heavy Vehicle Factory at Avadi, at the age of 19. After the marriage, the wife refused to live with him on the ground



he was partially blind, and she did not want to take care of the mother of the Petitioner, who was a cancer patient.

5. It is the submission of the learned Counsel for the Revision Petitioner/husband that, after delivery of the child, the wife did not come and join the matrimonial home. The husband filed Petition for restitution of conjugal rights, for which also she did not file any counter. Subsequently, the Petition for restitution of conjugal rights was withdrawn. Instead, the husband filed H.M.O.P.No.173 of 2013 on the file of the learned III Additional Principal Judge, Family Court, Chennai.

6. Learned Counsel for the Revision Petitioner invited the attention of this Court to the evidence in H.M.O.P.No.173 of 2013, wherein the wife, as Respondent Witness, R.W-1, was cross-examined by the learned Counsel for the Petitioner in H.M.O.P.No.173 of 2013, the husband, in which she had admitted the suggestions of the learned Counsel for the Petitioner that she refused to come and joined him. She admitted that the husband was partially blind, and the mother of the husband was cancer patient. She also admitted in the cross-examination that the husband got employment in the Heavy Vehicle Factory on compassionate ground.



7. To the pointed question by the learned Counsel for the Petitioner in H.M.O.P.No.173 of 2013, whether she had filed counter in the earlier Petition filed by the husband seeking restitution of conjugal rights. She claimed ignorance. Regarding the steps taken by her to join the matrimonial home, she had stated that she approached the church authorities, where they counselled the husband to take her home, but he did not come and invite her.

8. To the pointed question of whether she had gone on her own volition from the house of the husband. She had stated that she went to her husband's house, and it was locked. On enquiry, she came to know that her husband had gone to his mother's home.

9. Learned Counsel for the Revision Petitioner also invited the attention of this Court that the wife was cross-examined as R.W-1 before the learned III Additional Principal Judge, Family Court, Chennai, on 06.10.2020. During the course of cross-examination, she had stated that she was always willing to join her husband. He was refusing to take her back. At that time, R.W-1 was in the cross-examination part-heard stage.

The learned III Additional Principal Judge, Family Court, Chennai,



directed both parties to join in the matrimony, and the case was adjourned

for reporting settlement. Even after such adjournment, the wife refused to

join the matrimonial home. Therefore, once again, the case was taken up

for cross-examination of R.W-1. The learned III Additional Principal

Judge, Family Court, Chennai, on 16.03.2022, in further cross-

examination, the contention put forth by the husband as Petitioner in

H.M.O.P.No.173 of 2013 was put to her in cross-examination. Based on

her evidence in cross-examination, the learned III Additional Principal

Judge, Family Court, Chennai, had granted decree of divorce in favour of

the husband/Petitioner in H.M.O.P as per judgment dated 10.08.2022.

10. It is the further submission of the learned Counsel for the Revision Petitioner that, as per his service records, he had not removed the name of the wife as nominee for receiving pension and all his service benefits. He had furnished the service certificate along with the details of his retirement on medical grounds.

11. It is the submission of the learned Counsel for the Revision Petitioner/husband that the husband retired from service on 01.09.2023, as he lost 90% of his vision, which cannot be retained by medical treatment.



Since he had been granted employment on compassionate ground, he has to take care of the entire family in place of his father. Therefore, he had built the house for which he had to pay EMI (Equated Monthly Instalment) and take care of his aged widowed mother, who is a cancer patient.

12. From the additional typed set furnished by the learned Counsel for the Revision Petitioner, it is found that he is working as a Supervisor (non-technical). At the time of retirement, he was earning Rs.37,500 per month. The lump sum amount payable is Rs.15,41,295/-. After deduction, it is Rs.14,67,382/-. Retiring Pension is Rs.18,750/- with effect from 02.09.2023. The spouse details had been furnished to the employer. Spouse name: P.Mary Pramila, marital status: divorcee.

Retiring Pension	Rs.18,750/-
Commuted Retiring Pension	Rs.7,500/-
Residual Retiring Pension	Rs.11,250/-
Commutation Amount 40%	Rs.8,02,170/-

Therefore, it is the submission of the learned Counsel for the Revision Petitioner that he is ready to give one-time settlement of Rs.8 lakhs and odd, out of Rs.14,67,382/-, and it is further submitted that



Crl.R.C.No.811 of 2020

Rs.9,00,000/- as total, out of which Rs.3,00,000/- for the wife and Rs.6,00,000/- towards the child, daughter, as a deposit till she attains the age of majority.

13. Learned Counsel for the Revision Petitioner further submitted that he was not allowed to meet the child. The child refused to call him his father. Still, he is ready to give one-time settlement of Rs.9,00,000/-. Rs.3,00,000/- to his wife and Rs.6,00,000/- as deposit in the name of the child.

14. Learned Counsel for the Respondents vehemently objected to the line of argument of the learned Counsel for the Revision Petitioner, stating that the Revision Petitioner was adamant about not taking her to the matrimonial home. When she filed the case for maintenance, he had refused since she filed enhancement. He had decided to come out of voluntary retirement.

15. It is the submission of the learned Counsel for the Respondents that he has afforded to voluntarily retire. The employer had not attracted him to go for retirement on medical grounds. It is his decision only to



Crl.R.C.No.811 of 2020

evade payment to the wife. This Revision lacks merit and is to be dismissed.

16. To the pointed query of the learned Counsel for the Respondents/wife that whether she had filed any Appeal against decree of divorce granted to the husband. The learned Counsel for the Respondents/wife submitted that he had already filed Appeal, for which the learned Counsel for the Revision Petitioner submits that, till date, the husband has not received any notice from the Hon'ble High Court regarding Appeal against grant of divorce.

17. **Point for consideration:**

Whether the Criminal Revision Case is to be allowed?

18. Perused the typed set and additional typed set of the Revision Petitioner.

19. Heard the learned Counsel for the Revision Petitioner and learned Counsel for the Respondents.



WEB COPY 20. In the light of the submission made by the learned Counsel for the Revision Petitioner regarding the retirement benefits as per PPO (Pension Payment Order) published by employer, Heavy Vehicle Factory, Avadi, to the Petitioner herein, and the evidence of the wife in H.M.O.P before the learned III Additional Principal Judge, Family Court, Chennai, the submission of the learned Counsel for the Revision Petitioner is found acceptable since he had lost 90% of his vision. He had offered to retire on medical grounds.

21. During the course of the argument, this Court had raised a query with the learned Counsel for the Revision Petitioner that even though he had obtained decree of divorce against his wife, she continued in the service records. Whether he has any objection in ordering monthly pension or part of the pension for the wife. He claims that he can offer only a meagre amount or part of pension. Also, the query raised by this Court regarding medical expenses. Since he is employed at Heavy Vehicle Factory with more than 26 years of service. He joined service at the age of 20. Now, he is 47 years old. He is likely to continue to get the benefit of the Central Government Scheme for himself or his family towards his aged



mother, who is a cancer patient.

WEB COPY 22. The learned Counsel for the Revision Petitioner submitted that he is likely to get the same benefits even after retirement. Considering the development after filing of this Criminal Revision Case, the offer of the learned Counsel for the Revision Petitioner towards Rs.9,00,000/- (Rupees Nine Lakhs Only) is found reasonable, and therefore, the point for consideration is answered in favour of the Revision Petitioner and against the Respondents in the light of the above offer of the learned Counsel for the Revision Petitioner. **The Revision Petitioner is ordered to deposit Rs.3,00,000/- (Rupees Three Lakhs Only) towards his wife on the file of the learned III Additional Principal Judge, Family Court, Chennai, in M.P.No.218 of 2019 in M.C.No.548 of 2010. Also, he was ordered to deposit Rs.6,00,000/- (Rupees Six Lakhs Only) towards his child on the file of the learned III Additional Principal Judge, Family Court, Chennai, in M.P.No.218 of 2019 in M.C.No.548 of 2010.**

23. Both the amount shall be deposited within a reasonable period of three months from the date of this order. **The learned III Additional Principal Judge, Family Court, Chennai, is directed to deposit the**



Crl.R.C.No.811 of 2020

amount of Rs.6,00,000/- (Rupees Six Lakhs Only) in the name of the minor child, daughter namely (Merline Jones). Subsequently, till the minor attains age of majority. Rs.2,00,000/- (Rupees Two Lakhs Only) may be permitted to be withdrawn by the wife, the Petitioner in M.P.No.218 of 2019 in M.C.No.548 of 2010.

24. Since the Revision Petitioner had not removed the name of the wife from the service records and enabled the wife to receive pension after his life time till such as a token gesture. **He is directed to pay Rs.1,000/- (Rupees Thousand Only) to the wife during his life time.**

25. In the result, the **Criminal Revision Case is allowed.** Consequently, connected Criminal Miscellaneous Petition is closed.

01.12.2023

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Crl.R.C.No.811 of 2020

SATHI KUMAR SUKUMARA KURUP, J.,

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To

- 1.The III Additional Principal Judge,
Family Court, Chennai.
- 2.The Section Officer, VR Records,
High Court, Chennai.

Crl.R.C.No.811 of 2020

01.12.2023