



Crl.R.C.No.1457 of 2023
and Crl.M.P.No.12776 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2023

CORAM

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

Crl.R.C.No.1457 of 2023
and Crl.M.P.No.12776 of 2023

E.Balasubramaniam

... Petitioner

Vs.

1.B.Sangeetha

2.Minor.B.S.Anjana Shree

... Respondents

(Rep. by his mother and natural guardian
B.Sangeetha)

Prayer : Criminal Revision Case is filed under Sections 397 & 401 Cr.P.C. to set aside the orders dated 30.06.2023 in M.C.No.20/2019 passed by the Family Court, Thiruvallur.

For Petitioner : Mr.Perumulavil Radhakrishanan

ORDER

Challenge in this criminal revision case is made to the orders dated 30.06.2023 in M.C.No.20/2019 passed by the Family Court, Tiruvallur.



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2.The revision petitioner is the husband of the first respondent.

The respondents herein filed a petition in MC No.20/2019 under Section 125 Cr.P.C. praying to grant maintenance of Rs.15,000/- per month each to them and a sum of Rs.15,000/- towards educational expenses of the second respondent. The revision petitioner herein filed a detailed counter and the learned Family Court Judge vide her orders dated 30.06.2023 partly allowed the petition and directed the revision petitioner to pay a sum of Rs.5,000/- per month each to the respondents herein from the date of petition and also a sum of Rs.50,000/- per year towards educational expenses of the second respondent, aggrieved over which, the present revision is filed.

3.Mr.Perumulavil Radhakrishanan, learned counsel for the revision petitioner contended that though the revision petitioner was previously working for TCS at Hyderabad earning a sum of Rs.65,000/- per month, he resigned his job and he is now practicing as a junior advocate at Kancheepuram. His further contention is that the first respondent (wife) is a MBA graduate and is working in a private school



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on Administrative side. He therefore, contended that the first respondent is having independent source of income and that it is not necessary for the revision petitioner/husband to pay any amount to the respondents.

4.It is seen from the orders passed by the trial court that the respondents were sent out by the present revision petitioner from the matrimonial home and it was also admitted by the present petitioner in his counter by stating that he only sent the first respondent (wife) to her house. The first respondent's contention is that she has no independent source of income to maintain herself and her child. Though the present revision petitioner had claimed that his wife has sufficient means to maintain herself and the child, the petitioner / husband had not adduced any evidence to substantiate the same before the trial court. In fact, the trial judge in para 12, 13 & 14 of the impugned order had observed thus :

"12. The first petitioner's contention is that she has no independent source of income to maintain herself and her child. The respondent in his counter has claimed that the first petitioner has sufficient means to maintain herself but has not spoken as to the said sources of income of the first petitioner to maintain herself. Further even in his evidence also has not



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let in any evidence as to the petitioner's source of income to maintain herself. It is pertinent to note that the respondent has examined as R.W.2 to substantiate his contention that the first petitioner is employed in the school where R.W.2 is the Principal however R.W.2 in his evidence has denied the first petitioner's employment in the school where he is working as Principal. The counsel assisting the respondent contend that the evidence of R.W.2 is contradictory and he has wantonly suppressed the first petitioner's employment since in his evidence he has denied about the identity of the respondent and his knowledge about the case details whereas in Ex.R2 he has spoken about the identity of the respondent Balasubramaniam and also about the divorce proceedings and maintenance case proceedings between the petitioner and the respondent, but it is obvious to note that R.W.2 has been summoned to the court on the side of the respondent to speak as to the employment of first petitioner Sangeetha in the Annai Lourd Hr.Sec. School, Pattabiram and R.W.2 when questioned as to whether he knows the respondent Balasubramaniam who was present in the court, he has stated that he did not know the respondent Balasubramaniam. The perusal of Ex.R2 disclose that it is the reply sent by R.W.2 to the District Educational Officer on the RTI application given



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by Advocate Balasubramaniam. In the said letter R.W.2 has stated that the RTI applicant E.Balasubramaniam is no way connected to the school and the threat by E.Balasubramaniam to the teachers and as such just because R.W.2 has referred as to the RTI applicant name E.Balasubramaniam he cannot be presumed to have known the said the R.T.I applicant in person and further the said RTI applicant and the respondent before the Court are one and the same person. Further it is also obvious to note that in Ex.R2, R.W.2 has stated that the RTI applicant had threatened the teachers but he has not stated that he was also present at that time therefore the respondent's contention that R.W.2 knows him in person but wantonly failed to identify him is not acceptable. The non-lodging of complaint as to the alleged threat is no way connected with the present petition. It is also obvious to note that in Ex.R2 letter there is no reference as to the case in M.C.No.20/2019 of HMOP 87/2017. Hence, in these circumstances the respondent's contention that the R.W.2 has given false evidence and wantonly suppressed the first petitioner's employment is not acceptable and above all the facts the respondent has not filed any documents to show that the petitioner is working in the said school. It is for the respondent who asserts the first



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WEB COPY *petitioner's employment to prove the same and cannot take advantage of the alleged contradictions in the evidence of R.W.2 to prove his contention, therefore in these circumstance the contention of the respondent that the first petitioner is employed and has sufficient income is not acceptable. Hence, as the first petitioner has no independent income to maintain herself she is entitled for maintenance.*

13. The next contention of the respondent is that the first petitioner is highly educated a M.B.A., graduate and she has ability to earn income for her livelihood. The respondent further contend that P.W.1 in her cross-examination has admitted that she is a M.B.A. graduate and the same will show that the petitioner wantonly has filed the petition only to extort money from the respondent even though she has ability to earn. The petitioner contend that all these years she has been a house wife and she is unemployed and further as she has to take care of the minor child she could not go for any work hence the contention of the respondent is not correct. It is pertinent to note that the respondent never claimed that the first petitioner was going for work before marriage or after marriage when they were jointly living in the matrimonial home. Admittedly the second petitioner is in the custody of the first petitioner only and the respondent has not let in any



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evidence in contra to the first petitioner's evidence as to the fact that she alone had to take care of the child and therefore the respondent's objection is not acceptable. Further the respondent has not stated as to any other source of income of the first petitioner therefore in view of the above facts and findings as it is clear that the first petitioner has no other independent source of income to maintain herself she is entitled for maintenance for her and also her child the second petitioner.

14.The respondent contend that even though the first petitioner filed petition for restitution of conjugal rights she herself has admitted in her cross that she did not attend the case for the past 2 years and further now the petition for restitution of conjugal rights has been dismissed for petitioner's non-appearance and the petition in transfer OP 15/2020 filed by the first petitioner to transfer the petition for restitution of conjugal rights from Sub Court, Poonamallee to this court also dismissed for default and these facts would show that she has no real intention to live with the respondent and only to harass him had filed the petition and however he is ready to maintain his daughter alone. But as discussed above as the petitioner has no independent source of income to maintain herself and the child the respondent's



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5. All the observations made by the trial Court cannot be found fault with. The quantum of maintenance has been fixed by the trial Court based on the financial status of both the parties. In the circumstances, I do not see any reason to interfere with the orders passed by the trial Court.

6. Accordingly, the Criminal Revision is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed. The orders dated 30.06.2023 in M.C.No.20/2019 passed by the Family Court, Thiruvallur, is confirmed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

1.The Family Court, Tiruvallur.

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