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.Crl.RC.No.1115 of 2021.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 13.10.2023

Delivered On : 20.12.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No. 1115 of 2015
and
Crl.M.P.Nos.14236 & 14237 of 2021

1. Devendiran
2. Usha
3. Kamaraj

.. Petitioners

Versus

1. Radhika
 2. Minor. Harikishore
 3. Minor. Vinay
- (R2 & R3 represented by R1
mother and natural guardian
Radhika)
Respondents

..

Criminal Revision Case filed under Section 397 & 401 of Cr.P.C., against the Judgment of the learned Additional District Sessions Judge, Myladuthurai in C.A. No. 8/2019 dated 30.09.2021 partly modifying the order passed by the learned Judicial Magistrate No.1, Myladuthurai, Myladuthurai District made in M.C.No.2/2015 dated 07.09.2018 directing the first Petitioner herein to provide residential house and to pay the maintenance of Rs.6,000/- to the first Respondent and Rs.3,000/- to Respondents 2 and 3 each totaling Rs.12,000/- per month and also directed to pay a sum of Rs.10,000/- each year for the expenses of festivals and also



.Crl.RC.No.1115 of 2021.

directed to pay a compensation a sum of Rs.10,00,000/- to the first Respondent.

For Petitioners : Mr. T.R. Ravi
For Respondents : Ms.P.Anitha
for Mr. R. Rengarajan

ORDER

This Criminal Revision has been filed by the Petitioners to set aside the Judgment of the learned Additional District and Sessions Judge, Myladuthurai in C.A. No. 8 of 2019 dated 30.09.2021 partly modifying the order passed by the learned Judicial Magistrate No.1, Myladuthurai, Myladuthurai District made in M.C.No.2/2015 dated 07.09.2018.

2. The marriage between the first Respondent and the first Petitioner was solemnised on 02.09.2001 and out of such wedlock, the respondents 2 and 3 were born. According to the first Respondent, the marriage was by and large peaceful for some years. Thereafter, the first Petitioner, suspected her character and harassed her mercilessly. By passage of time, the first Petitioner wanted to dissolve the marriage with the first Respondent and for such purpose, the first Petitioner had given a false complaint before the police station as if he was assaulted by the family members of the first



.Crl.RC.No.1115 of 2021.

Respondent. On enquiry, it revealed that the complaint was false and therefore, the first Petitioner was warned by the police officials not to make any such false and frivolous complaints. According to the first Respondent, the first Petitioner was employed in a foreign nation, earned well and was in possession of jewels, four wheeler and other immovable properties. It is stated by the first Respondent that the Petitioners 2 and 3, who are the sister and brother-in-law of the first Petitioner also supported the first Petitioner in his attempt to dissolve the marriage with the first Respondent and to contract a second marriage. On 19.01.2014, during a trivial matrimonial dispute, the first Petitioner scolded the first Respondent as if she is in having an illegal relationship with one of his relative's son. Further, the first Petitioner also compelled the first Respondent to sign blank papers so as to utilise it to dissolve the marriage. After obtaining her signature, the first Petitioner driven the respondents out of the matrimonial home. Later, on the basis of the signatures obtained in blank papers, the first Petitioner filed HMOP No. 79 of 2014 for dissolution of marriage. On notice, the first Respondent filed the present petition seeking maintenance. Immediately thereafter, the first Petitioner withdrew HMOP No. 79 of 2014 filed for dissolution of marriage. According to the first Respondent, the first Petitioner is resourceful enough and is affluent to pay maintenance to the respondents. On the other hand,



.Crl.RC.No.1115 of 2021.

the first Respondent is under the shelter of her parents along with the minor children. The respondents have no sufficient means to meet their basic needs. Therefore, the first Respondent filed a complaint before the Protection officer invoking Section 20 of The Protection of Women from Domestic Violence Act, 2005 seeking to direct the first Petitioner to pay Rs.10,000/- to the first Respondent towards monthly maintenance, a sum of Rs.5,000/- each to the respondents 2 and 3 towards maintenance and Rs.15,00,000/- as compensation to her. The report forwarded by the Protection Officer was taken on file by the learned Judicial Magistrate No.1, Mayiladuthurai as M.C. No.2 of 2015 and notice was ordered to the Petitioners herein.

3. On notice, the first Petitioner filed a counter statement stating that it is true that the marriage between the first Petitioner and first Respondent was solemnised on 02.09.2001 and out of such wedlock, the respondents 2 and 3 have born. It is also stated that within few months of the marriage he went out of India in connection with his employment and he will return to the matrimonial home only during holidays. At the time of marriage, the parents of the first Respondent did not give any dowry in the form of utensils, jewels etc., After marriage, out of his employment, the first



.CrI.RC.No.1115 of 2021.

Petitioner had purchased five sovereigns of gold jewellery and given it to the first Respondent. Even during his employment, he had sent money, jewels and other articles to the first Respondent but the first Respondent in turn spent the amount for her parents without the knowledge of the first Petitioner. Further the first Respondent indulged in unnecessary expenses and led a luxurious life by spending the amount towards unnecessary expenses. When this was questioned, the first Respondent indulged in a quarrel and left the matrimonial home along with the respondents 2 and 3. For the past four years both the first Respondent and the first Petitioner are residing separately and the conciliation efforts made did not yield the desired result, therefore, in the presence of Thiru. Rajmohan, Advocate, the first Respondent agreed to dissolve the marriage and signed deed of dissolution of marriage. It is not as if the signatures of the first Respondent were obtained in blank papers, as alleged. It is true that the first Petitioner filed HMOP No. 79 of 2014 before the Sub Court, Mayiladuthurai but he withdrew it in the interest and welfare of the minor children. In such circumstances, the claim for maintenance raised by the first Respondent is not sustainable and he prayed for dismissal of the Maintenance Case.



.Crl.RC.No.1115 of 2021.

4. Before the learned Judicial Magistrate No.1, Mayiladuthurai, the first Respondent/wife examined herself as PW1, one Mr. Alagirisamy as PW2 and Exs. P1 to P4 were marked. On behalf of the Revision Petitioners herein, the first Petitioner/husband and second petitioner/father of the first Petitioner were examined as RW1 and RW2, however, the Petitioners have not marked any document.

5. The trial Court, on considering the oral and documentary evidence concluded that without dissolving the marriage solemnised with the first Respondent, the first Petitioner had contracted a second marriage and it is proved by the first Respondent through her oral evidence and it has not been denied by the first Petitioner. Further, the first Petitioner in his cross-examination agreed that there is a house in which he has 50% right and the house has not been partitioned with his brother. The first Petitioner also admitted that he was employed in a foreign country and earned money. The trial Court concluded that it is not the case of the first Petitioner that he is indigent and he is not in a position to pay maintenance to his wife and children. It was also concluded that the Petitioners have subjected the first Respondent to matrimonial cruelty when she lived in the matrimonial home.

The trial Court also concluded that the Petitioners 2 and 3 are instrumental



.CrI.RC.No.1115 of 2021.

in contracting a second marriage to the first Petitioner when his marriage with the first Respondent was subsisting. Having regard to the above conclusion, the learned Judicial Magistrate No.1, Mayiladuthurai allowed the Maintenance case filed by the first Respondent herein by directing the first Petitioner to pay Rs.10,000/- per month towards maintenance of the first Respondent; Rs.5,000/- each to the respondents 2 and 3 until they attain majority and Rs.15,00,00/- to the first Respondent towards compensation.

6. Assailing the order dated 07.09.2018 passed by the learned Judicial Magistrate No.1, Mayiladuthurai, the Petitioners have filed an Criminal Appeal No. 8 of 2009 before the appellate Court mainly contending that the sum of Rs.15,00,000/- directed to be paid as compensation to the first Respondent is onerous, exorbitant and unreasonable. It was also contended that the trial Court failed to examine the resourcefulness of the first Respondent to pay such a huge amount as compensation. It was further contended that the trial Court ignored the submission of the first Petitioner that he is ready and willing to live with the first Respondent, while so, the order dated 07.09.2018 passed by the trial Court is legally not sustainable.

7. The Appellate Court, taking note of the arguments advanced on



.Crl.RC.No.1115 of 2021.

behalf of the Petitioners and the facts and circumstances of the case, modified the order passed by the learned Judicial Magistrate, Mayiladuthurai by directing the first Petitioner to pay Rs.6,000/- per month as maintenance to the first Respondent; Rs.3,000/- each to the respondents 2 and 3 towards maintenance; Rs.10,000/- to the respondents during the month of November every year to commemorate the festival and Rs.10,00,000/- as compensation as against the sum of Rs.15,00,000/- awarded by the trial Court.

8. As against the order dated 30.09.2021 passed by the Appellate Court, the Petitioners have come forward with this Criminal Revision Case.

9. The learned Counsel for the Revision Petitioners submitted that the first Petitioner has already filed H.M.O.P.No.79/2014 before the learned Sub Judge, Mayiladuthurai, however, he withdrew it taking note of the welfare of the minor children. Further, it is the contention of the learned Counsel for the Revision Petitioners that some years back, the first Petitioner was employed as a driver in Kuwait and thereafter, he returned to India. However, the first Respondent, by citing his employment in Kuwait long back, has filed the maintenance case claiming huge amount as maintenance.



.Crl.RC.No.1115 of 2021.

Now, the first Revision Petitioner is in India and he is engaged in Agriculture work and therefore, he is unable to pay such huge amount ordered by the first appellate Court. The learned Counsel for the Petitioners also submitted that second petitioner is the sister of the first Petitioner and the third petitioner is the husband of the second petitioner. The Petitioners 2 and 3 are in no way connected with the claim for maintenance made by the first Respondent and they were unnecessarily roped into this litigation. It is also stated that the appellate Court, while modifying the quantum of maintenance has directed the first Petitioner to pay Rs.10,000/- during the month of November every year to enable the respondents to commemorate the festival. This amount was ordered by the appellate Court on it's own and there was no relief sought for by the respondents themselves. Also, he submitted that during the pendency of this case, his elder son had attained the age of majority. Therefore, he seeks to set aside the order of the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam modifying the order of compensation awarded by the trial Court.

10. Per contra, the learned Counsel for the Respondents submitted that the Judgment of the learned Additional District and Sessions Judge, Myladuthurai is erroneous as the fair amount of maintenance and



.Crl.RC.No.1115 of 2021.

compensation awarded has been reduced without any reasoning. While so, the present Criminal Revision Case seeking to further reduce the quantum of compensation or to set aside the order of the first Appellate Court cannot be sustained.

11. The learned Counsel for the Respondents invited the attention of this Court to the Judgment of the learned Additional District and Sessions Judge, Myladuthurai in C.A.No. 8/2019 dated 30.09.2021 and submitted that the Revision Petitioners have filed this Petition only to delay the payment of maintenance. As on date, as per the memo filed by the learned Counsel for the Respondents and as per the quantum fixed by the learned Additional District and Sessions Judge, Myladuthurai in C.A.No.8/2019, the arrears of maintenance is Rs.17,20,000/-. Therefore, the Revision itself is having no merits and is to be dismissed.

The Point arise for consideration in this Criminal Revision Case is as follows:-

Whether the Order passed by the learned Additional District and Sessions Judge, Myladuthurai in C.A.No. 8/2019 dated 30.09.2021 is to be set aside as perverse?

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.Crl.RC.No.1115 of 2021.

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12. Pending the present Criminal Revision Case, as a condition precedent for grant of interim stay, by order dated 06.01.2022, this Court directed the first Petitioner to pay 50% of the arrears of maintenance. It is reported that the first Petitioner has paid a sum of Rs.70,000/- out of Rs.2,40,000/-. When the Criminal Revision Case was listed for further hearing on 09.02.2022, the learned Counsel for the Petitioners sought time to pay the arrears amount.

13. Before the trial Court, on behalf of the Petitioners, the first Petitioner and his father were examined as P.W-1 and P.W-2. In the deposition of the first Petitioner, he admitted that he was employed in Kuwait for sometime. It was not specifically pleaded by the first Petitioner that he is not resourceful enough to pay the amount. Even though it was stated by the first Petitioner that he had returned from Kuwait and is engaged in agricultural work, he has not even produced any document to show his actual income. In Para No.16 of the order passed by the trial Court, it was specifically observed that the first Petitioner, in his cross-examination has stated that he has no movable or immovable property in his name, however, he has not produced any document to substantiate the same.



.Crl.RC.No.1115 of 2021.

The first Petitioner in his cross-examination has stated that there is a house in which he and his brother has got a share but it was not partitioned among themselves. Further, the trial Court specifically observed that the first Petitioner has not even produced his bank statement. Therefore, the trial Court presumed that the first Petitioner is resourceful enough to pay the maintenance claimed by the first Respondent. However, on appeal, the appellate Court found that the sum of Rs.15,00,000/- awarded by the trial Court, as compensation to the first Respondent is exorbitant and reduced it to Rs.10,00,000/-. The appellate Court also reduced the monthly maintenance payable to the first Petitioner from Rs.10,000/- to Rs.6,000/-. Similarly, the monthly maintenance of Rs.5,000/- each awarded to the respondents 2 and 3 was also reduced to Rs.3,000/- each. At the same time, the first appellate Court, without any prayer sought for by the respondents, has awarded Rs.10,000/- payable by the first Petitioner to the respondents to commemorate the festival. This amount of Rs.10,000/- directed to be paid by the first Petitioner is legally not sustainable and therefore it is hereby set aside.

14. As far as the plea of the first Petitioner that he is ready and willing to live with the respondents, it is to be noted that even before the



.Crl.RC.No.1115 of 2021.

learned Judicial Magistrate, in the cross-examination, the first Petitioner admitted that he is living with one Sangeetha. It is also stated that a deed of divorce has been duly entered into between the first Petitioner and first Respondent and therefore, the marriage between them has been dissolved. This submission cannot be countenanced. In fact, on the basis of the so-called deed of divorce, the first Petitioner has filed HMOP No. 79 of 2014 for dissolution of marriage, but he withdrew it. Therefore, it cannot be considered that the marriage between the first Petitioner and the first Respondent was dissolved in accordance with law. Consequently, the so-called second marriage between the first Petitioner and one Sangeetha cannot be recognised by law. In such circumstances, the trial Court is wholly justified in holding that when the first Petitioner contracted a second marriage with another woman, his plea that he is ready to live with the first Respondent and minor children cannot be countenanced. This Court does not find any reason to interfere with such an observation made by the courts below.

15. The learned Counsel for the Petitioners, during the course of argument, submitted that the first Respondent/wife has landed properties in her name, she hails from an affluent family and she is in a position to



.CrI.RC.No.1115 of 2021.

maintain herself and the two minor children. At the outset, it must be observed that before the trial Court, except examining himself and his father, as PW2, the first Petitioner did not let in any documentary evidence. Therefore, the contention that the first Respondent hails from an affluent family and she has movable and immovable properties in her name cannot be countenanced. Even assuming that the first Respondent has properties in her name, the obligation on the part of the first Petitioner, being the husband of the first Respondent, to maintain his wife and children is not only legal but also moral. Therefore, the first Petitioner is bound to maintain the respondents and he cannot be permitted to ignore such an obligation on his part. Above all, as mentioned above, the marriage solemnised between the first Petitioner and the first Respondent has not been dissolved in a manner known to law. Therefore also, the first Petitioner, as a husband, has an obligation to maintain his wife/first Respondent and the two children/respondents 2 and 3.

16. It is seen from the records that earlier, the first Petitioner filed HMOP No. 79 of 2014. On notice, the first Respondent filed the present maintenance case. Apprehending that the first Petitioner may have to pay maintenance, he has conveniently withdrew the HMOP No. 79 of 2014 filed



.Crl.RC.No.1115 of 2021.

for dissolution of marriage. Thereafter, the first Petitioner, with the help of his henchmen, went to the house of the parents of the first Respondent/wife and threatened her and her parents to make the first Respondent sign a deed of dissolution. This conduct of the first Petitioner would disentitle him to seek for any indulgence from this Court. In any event, after assessment of the entire evidence, the learned Sessions Judge modified the quantum of maintenance from Rs.10,000/- to Rs.6,000/- to the wife and Rs.5,000/- to Rs.3,000/- to the minor children which cannot be said to be onerous.

17. In the light of the above discussion, the point arise for consideration in this Criminal Revision Case is answered in favour of the Respondents and against the Revision Petitioners.

18. Before parting with, it must be observed that in the Maintenance case, the first Respondent/wife had impleaded the sister of the husband and her husband/brother-in-law as parties. Taking note of the facts and circumstances of this case, this Court is of the view that they are not necessary parties for adjudication of the Maintenance Case. The Maintenance Case revolves around the wherewithal and resourcefulness of the first Petitioner to pay maintenance to his wife and children in which



.Crl.RC.No.1115 of 2021.

case, impleading the sister of the husband or brother-in-law of the husband is unnecessary.

In the result, this ***Criminal Revision is partly allowed.*** The Judgment of the learned Additional District and Sessions Judge, Myladuthurai in C.A.No. 8/2019 dated 30.09.2021 partly modifying the order passed by the learned Judicial Magistrate No.1, Myladuthurai, Myladuthurai District made in M.C.No.2/2015 dated 07.09.2018 is confirmed except by deleting the direction issued to the first Petitioner to pay Rs.10,000/- to the respondents during the month of November every year to commemorate the festival.

20.12.2023

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



.Crl.RC.No.1115 of 2021.

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To

1. The Judicial Magistrate No.I,
Myladuthurai.
2. The Additional District Sessions Judge,
Myladuthurai.
3. The Public Prosecutor,
High Court, Madras.



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.Crl.RC.No.1115 of 2021.

SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
Crl.RC.No.1115 of 2021

20.12.2023