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Crl.R.C.No.1494 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

CORAM:

THE HON'BLE **MR.JUSTICE M.NIRMAL KUMAR**

CRL.R.C.No.1494 of 2017

and

Crl.M.P.No.14876 of 2017

P. Kumar

... Petitioner

Versus

1.Sangeetha

2.Minor K.Maheshwaran

3.Minor K.Madhumitha

(R2 & R3 represented by their mother/Natural
Guardian/1st respondent)

... Respondents

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. to set aside the order made in M.C.No.21 of 2016 dated 11.09.2017 passed by the learned Family Court Judge, Villupuram.

For Petitioner : Mr.E.Sathiyaraj

For Respondents : Mr.C.Venkatesan
Legal Aid Counsel



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returned to the first respondent as permanent alimony. The Family Court failed to consider the same. Further, before the Lok Adalat a settlement has been arrived, thereafter, the Family Court could not issue the order of maintenance. The petitioner is a Mason having seasonal employment, he does not have any permanent employment. The respondents have failed to prove that the petitioner was making an earning of Rs.750/- to Rs.1,000/- per day and the Lower Court without any material, arrived at the earnings of the petitioner. He further submitted that on 07.08.2015 during Mega Lok Adalat, before the Chief Judicial Magistrate and other Mediators, the petitioner and respondents along with family members arrived at the compromise. Thereafter, the properties were settled and memo also filed before the Family Court on 27.12.2016. The respondents having arrived at a settlement ought to have withdrawn the maintenance case, on the other hand they are continuing with the same. Further, in the evidence, the first respondent admits that she is residing still with the petitioner's mother in his property and the settlement



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was arrived only on condition that in future there would not be any maintenance demand, which was accepted by the first respondent. The mother of the petitioner examined as P.W.2 with whom the petitioner had some misunderstanding, hence she is mutilated to speak against the petitioner.

4. The petitioner examined himself as R.W.1 and filed proof affidavit confirming the settlement arrived in the Mega Lok Adalat on 07.08.2015 and also filing of the memo dated 27.12.2016. He further submitted that from September, 2016, the first respondent along with her children deserted the petitioner and she was living separately on her own. The Lower Court without considering the settlement arrived at between the petitioner and the respondents and also the two properties in the name of the minor children/respondents 2 and 3 and payment of cash, directed the petitioner to pay maintenance as stated above, which is not proper and liable to be set aside. Hence, filed this petition.



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5. Mr.C.Venkatesan, learned legal aid counsel appearing for the respondents submitted that during the pendency of the above revision, the matter was referred before the High Court Mediation and Conciliation Centre. There were four hearings, i.e. on 19.03.2020, 24.03.2020, 29.01.2021 and finally on 05.02.2021. During the Mediation, the petitioner was reiterating his above condition. The first respondent informed that the settlement of property was in the name of minor children only and one of the property, namely, housing plot was purchased from the sale of 13 sovereigns of jewels of the first respondent, which is admitted by the petitioner in his evidence dated 06.09.2017. He sold the 13 sovereigns of jewels presented during marriage and purchased two housing plots value about Rs.1,75,000/- at Valavanur. The first respondent further informed that the housing plot in Madhagadipattu village, Villiyanur Taluk was purchased from the funds she bought from her parents. The properties have been settled to the minor children after filing of the Maintenance Case. The settlement of properties in



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the name of minor children and cash of Rs.2,00,000/- were given to the minor children after family settlement. The respondents were not paid any maintenance. The trial Court considering all these aspects directed the petitioner to pay a sum of Rs.2,500/- per month to the first respondent and to the second and third respondents a sum of Rs.1,000/- per month each. The children/respondents 2 & 3 are still continuing their education and it is only the first respondent, who is taking care of them. The petitioner never took care of them or paid any maintenance and hence, prayed for dismissal of this petition.

6. Considering the submissions and on a perusal of the material, the contention of the petitioner cannot be considered. The trial Court considered the petitioner's contention, thereafter passed a well reasoned order. On perusal of the evidence, it is seen that the petitioner admits about the relationship with one Ilakiya during the subsistence of the marriage with the



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first respondent. The petitioner voluntarily deserted the respondents 1 to 3, failed to maintain them, take care of them and to pay the maintenance amount. Further, the petitioner's contention that the properties have been settled and hence, no maintenance to be paid, is also not proper. The settlement is not conditional one and in any event this settlement will not absolve the petitioner from maintaining his wife and children.

7. It is also seen from the report received from the Family Court, Villupuram in D.No.107/2018 dated 15.02.2018, wherein it is stated that there is no compromise arrived before the Lok Adalat and no report received from the Chief Judicial Magistrate Court, Villupuram in this regard. The report also reveals that the petitioner adopting dilatory tactics and dragging on the proceedings for one reason or other. In view of the same, this Court finds no reason to interfere with the order passed by the trial Court.

