



1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2023

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

CrI.RC(MD)No.234 of 2022

1.Bhuvaneshwari

2.Minor Devika

3.Minor Dharshini

(Minor respondents 2 and 3 are represented by
their mother as natural guardian 1st respondent)

... Petitioners/Respondents/Petitioners

Vs.

1.Ganeshan

2.Ramanathan

... Respondents/Appellants/Respondents
1 and 2

Prayer:- This Criminal Revision Petition has been filed under section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the order passed by the Additional District and Sessions Judge, Sivagangai, dated 05.11.2019 in C.A.No.66 of 2018 against the order passed by the District-cum-Judicial Magistrate, Karaikudi, dated 11.08.2018 in M.C.No.47 of 2015 and set aside the same.



For Petitioner : Mr. G.Thiruvartselvan

For 1st Respondent : Mr. P.Muruganandan

For 2nd Respondent : No appearance

ORDER

This criminal revision has been filed seeking to call for the records relating to the order passed by the Additional District and Sessions Judge, Sivagangai, dated 05.11.2019 in C.A.No.66 of 2018 against the order passed by the District-cum-Judicial Magistrate, Karaikudi, dated 11.08.2018 in M.C.No.47 of 2015 and set aside the same.

The facts in brief:

The marriage between wife/petitioner and husband/respondent took place on 03.11.2006 as per the family customs. At that time of the marriage, she was provided sufficient sridhana articles, extra. They started to live in joint family. But during the joint family living, she was ill-treated and harassed. Later, she became pregnant and inspite of the above said pregnancy, she was ill-treated. Two children were born out of the wedlock. But without any sufficient reason, she was driven out of the house. After a panchayath, they rejoined, even after rejoining, the



harrasment continued, demanding more dowry and jewellery. She was driven out of the house along with her children. Now living with her parental home. Her husband was working in Singapore and earning more than Rs.50,000/- apart from that he is owning several properties. Seeking maintenance of Rs.10,000/- she filed a petition before the trial Court. Apart from that also, she also sought several reliefs but that was resisted by the husband and other stating that wife was not co-operating for conjugal relationship. Within three months from the date of the marriage, the husband went to abroad for job. After delivery of the child, she returned to the matrimonial home, but again by picking up quarrel, she went to her parental home and her parents also supporting her. The husband underwent surgery in abroad. She demanded seperate house but she voluntarily deserted the matrimonial home and went to the parental home along with children. In 2013, she lodged a false complaint and after the Police enquiry, she received the jewellery. Even though he was admitted in hospital for surgery, he was not visited by the wife and her parents. He sent a legal notice asking his wife to come to the matrimonial home. But reply was sent stating that she can only live in village namely Nemathanpatti and Kanadukathan, husband must come to that place. But



the husband cannot shift his residence to Kanadukathan, he also filed HMOP No.170 of 2015, seeking restoration of conjugal rights.

3. At the conclusion of the enquiry, the trial Court found that the husband is bound to maintain the wife and children and apart from granting several reliefs, he was also directed to pay a sum of Rs.3,000/- each per month to the wife and the children each. Against which, the husband preferred the appeal before the appellate Court namely Additional District Court, Sivagangai in C.A.No.66 of 2018 that was partly allowed on 05.11.2019 negating the wife claim for maintenance. In respect of other reliefs, it was confirmed.

4. Challenging the above said order and quantum of maintenance, the wife and children are before this Court by way of this revision.

5. Heard both sides. Going through the records, it is seen that simple issue has arisen between the husband and wife. Where to live was the only issue between them. The wife insisted that they may reside independently either in Kanadukathan or Nemathanpatti, but the husband



WEB COPY

was not willing stating that he cannot leave his village, since he has to take care of his parents and properties extra. The simple issue ought to have been sorted out between them amicably. It is even admitted by both of them that in one or two occasions, there was compromise between them and rejoined together and later separated. Now it appears that still there is a possibility of settlement between them, provided both of them are coming down adopt. Unless such course is adopted, there cannot be any solution for the issue.

6. Getting to the subsequent happening, the husband says that he filed HMOP seeking restoration of conjugal rights. But perusal of records shows that only the wife filed the above said petition, seeking restoration under Section 9 of the Hindu Marriages Act. But husband filed the petition seeking divorce that was rejected, against which HMCMA No.9 of 2019 was also filed before the Additional District Judge, Sivagangai. So, contention of the part of the husband that he filed the petition seeking restoration of conjugal rights is not correct on



WEB COPY

records. In the ground it is stated that HMOP No.170 of 2015 was filed by him seeking restoration of conjugal rights, that was allowed. But later wife failed to comply the order. So, he filed a petition seeking divorce. But as mentioned above it appears that the wife also filed HMOP No.18 of 2020 before the Sub Court, Devakkottai, for restoration of conjugal rights and what happened with the above said petition is not clear on records. Subsequently she also filed C.C.No.104 of 2020 before the Judicial Magistrate Court, Thevakkottai, on the ground that the husband performed second marriage. So these are the developments that took place subsequent to the above said proceedings. Now whatever it may be there is no possibility of reunion between them since specific allegation is made that husband married one Neelaveni and living with her. In the light of the above said situation, reunion is not possible now.

7. Even though maintenance was granted by the trial Court to the wife also, her request was rejected on the ground that she was living seperately without any sufficient reasons. Her evidence was extracted by



appellate Court to record such a finding. But now as mentioned above some other development also taken place. Moreover as mentioned above where to live is the only issue between them. In those circumstance and also in view of the subsequent development, it cannot be said that wife voluntarily left the matrimonial home and now refused to live with her husband. So, recording the reason by the appellate Court now is also meaningless in view of the subsequent development. In view of the above said development, order of the appellate Court is liable to be interfered and accordingly interfered.

8. In the result, this criminal revision is partly allowed. The order of granting maintenance to the children is confirmed. So far as the first petitioner namely the wife is concerned, the first respondent is directed to pay the monthly maintenance of Rs.3,000/- as ordered by the trial Court from the date of original petition till the date of order and from the date of filing the appeal, the first respondent is directed to pay a sum of Rs.5,000/- to the first revision petitioner regularly.



WEB COPY

9. With the above said modification, this criminal revision is partly allowed.

28.02.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
Indu

To

The learned Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



9

G.ILANGOVAAN,J

Indu

CrI.RC(MD)No.234 of 2022

28/02/2023