



Crl. R.C.(MD)No.389 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 11.09.2023

Delivered On : 27.09.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

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Panjakalai

.. Petitioner

Vs.

1.P.Saritha

2.Minor Deva

3.Minor Dinesh

.. Respondents

(Petitioner and 2 and 3 are minors
represented by their next friend/mother
namely P.Saritha)

Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records relating to the order dated 13.03.2019 made in M.C.No.22 of 2009 on the file of the Judicial Magistrate, Melur and set aside the same.

For Petitioner : Mr.P.R.Prithiviraj
For Respondents : Mr.D.Senthil

ORDER

This petition has been filed by the petitioner to set aside the order passed in M.C.No.22 of 2009 dated 13.03.2019 on the file of the Judicial Magistrate, Melur



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wherein the respondents herein have filed a petition as against the petitioner herein under Section 125 of Cr.P.C., for maintenance and the trial Court has awarded a sum of Rs.4,000/- to the first respondent and a sum of Rs.3,000/ towards monthly maintenance amount each to the respondents 2 and 3 and the amount has to be paid within 5th of every month. As against the order passed by the trial Court, the present criminal revision case is filed by the petitioner.

2.The contention of the petitioners therein in M.C.No.22 of 2009 is that the marriage between the first petitioner therein and the respondent therein solemnized on 24.03.1999. Thereafter, two male child were born to them. After marriage, the first petitioner therein came to know that the respondent therein had illegal intimacy with other ladies and when the same was questioned by the first petitioner therein, the respondent used to harass the first petitioner and demanded money from the family of the first petitioner. Thereafter, Panchayat was convened and again the first petitioner was living with the respondent. Thereafter, the respondent demanded Rs.50,000/- from the parents of the first petitioner. Thereby, she left the matrimonial home and living with her parents. The first petitioner is unable to maintain herself and thereby, she filed the petition. The respondent is earning a sum of Rs.3,00,000/- from the agricultural income and also he was earning Rs.50,000/- through auto and money lending business. The respondent has to pay maintenance to the petitioners.



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3.The case of the respondent therein in M.C.No.22 of 2009 is that the first petitioner therein had illegal intimacy with one Sasikumar and the same was deprecated by the respondent and thereby, the first petitioner left from the matrimonial home without any valid reasons by leaving two children and now the children are under the care and custody of the respondent. Thereafter, the respondent filed H.M.O.P.No.117 of 2009 for divorce and the same is pending. While so, by suppressing the fact that two minor children are with the respondent, she filed the petition by including the minor children as petitioners. Since the first petitioner without any valid reasons residing separately, she is not entitled to maintenance herself from the respondent.

4.In order to prove the case before the trial Court on the side of the petitioners therein, the first petitioner herself examined as P.W.1 and her father was examined as P.W.2 and marked Ex.P1 to Ex.P3. On the side of the respondent, he himself examined as R.W.1 and marked Exs.R1 to R16.

5.After elaborate discussion, the trial Court has partly allowed the application and awarded a sum of Rs.4,000/- to the first petitioner therein and Rs. 3,000/- each to the petitioners 2 and 3 therein towards monthly maintenance.



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Aggrieved by the said order, this revision case has been filed by the husband petitioner on the following grounds:-

The trial Court failed to consider that there is no documents produced by the petitioner to prove the income of the respondent. The trial Court failed to consider that the first petitioner is living separately without any valid reasons and she had illicit intimacy with another person and she is not entitled to maintenance. The trial Court failed to consider that the children are under care and custody of the respondent and thereby, the maintenance amount cannot be ordered for the minor children. The trial Court failed to consider the evidence of P.W.1 and P.W.2 where they have not stated anything about the custody of the children with them. The trial Court failed to consider the documents and evidence adduced by the petitioner and documents filed by him.

6.The learned counsel appearing for the petitioner would contend that the petitioner has filed a divorce petition in H.M.O.P.No.117 of 2009 and the first respondent is not entitled for maintenance since she had illicit intimacy with another person and the trial Court failed to consider this aspect. Further the children are under care and custody of the petitioner and to that effect, the petitioner also filed Exs.R1 to R16. But the same have not been considered by the trial Court. P.W.1 in her evidence has not stated about the custody of children and P.W.2 who is the father



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of the first respondent also admitted that the children are under care and custody of this petitioner. But without considering these aspects, the trial Court has passed the impugned order. Therefore, the order of the trial Court is liable to be set aside.

7.The learned counsel appearing for the respondents would contend that the petitioner had illicit intimacy with another women and the same was questioned by the first respondent and he assaulted the first respondent and also he demanded money from the parents of the first respondent and thereby, she left the matrimonial home for the said valid reason. The petitioner being the husband of the first respondent bound to maintain the children and his wife thereby, the trial Court has awarded the maintenance for the respondents herein. Therefore, the present revision case is liable to be dismissed.

8.Upon perusing the documents and evidences adduced on both sides and upon perusing the judgments of lower Courts, the points for determination in this petition is whether the order passed by the trial Court is sustainable in law and facts.

Point:-

9.In this case, there is no contravention with the relationship of the parties.

It is admitted fact that the first respondent is legally wife of the petitioner and the



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respondents 2 and 3 are children born to the petitioner and the first respondent.

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10. According to the petitioner, the first respondent had illicit intimacy with one Sasikumar and she lived with him and thereafter, she left from the matrimonial home and then she returned back to home and thereafter, they lived as husband and wife and again she eloped with Sasikumar by leaving the two children. Therefore, he filed H.M.O.P.No.117 of 2009 for divorce and the same is pending. The minor children are with the custody of petitioner only. But the first respondent suppressed the aforesaid fact and filed the petition as if the children are along the first respondent.

11. According to the first respondent, the petitioner had illicit intimacy with another woman and he harassed her and thereby, she left from the matrimonial home and living at parents home. Now this Court has to decide whether the first respondent left from the matrimonial home and living separately without any valid reasons and the children are under whose custody. In this context P.W.1 has deposed that the petitioner harassed her and thereby she left from matrimonial home. The petitioner also admitted that due to dispute between them, she was living separately with her parents.



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12.In this context, both the petitioner as well as the first respondent made allegation against each other that they had illicit intimacy. But in order to prove the same, there is no sufficient evidence adduced on either side. However, the petitioner filed H.M.O.P.No.117 of 2009 and the same is also pending. While so, the first respondent also living separately with her parents under the said circumstances. It is the duty of the petitioner to maintain his wife.

13.Next question is whether the children are with the first respondent. According to the first respondent, the children are residing with her and during cross examination she deposed that 'எனது குழந்தைகள் வேம்பத்தூரில் உள்ள விடுதியில் தங்கி படித்து வருகிறார்கள். இருவருமே பார்த்து வருகிறோம்'. Therefore, from the evidence of P.W.1, it reveals that the children are in hostel and both of them are taking care of the children. Per contra the petitioner's contention is that the children are in his care and custody and he only paid hostel fees and other expenses to that effect, he marked Ex.D1 to Ex.D16. On careful perusal of the said documents, it is clear that the petitioner only admitted the minor children in the hostel and has been paying fees and thereby, the minor children are not under the custody of the first respondent/wife.

14.On careful perusal of those documents, it reveals that the petitioner only



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paid school fees and maintaining the children. Further in divorce notice Ex.P1 itself the petitioner stated that the children are in the care and custody of the petitioner and the first respondent left the matrimonial home by leaving the children with the petitioner. In Ex.P2, reply notice of first respondent, there is no whisper about the custody of children. That apart, the P.W.2 who is the father of the first respondent during cross examination admitted that 'மகன்கள் இருவரையும் எதிர்மனோதாரர்தான் பராமரித்து வருகிறார்'. Therefore, he categorically admitted that the children are under the care and custody of the petitioner. Therefore, from the aforesaid evidence, it is clear that the respondents 2 and 3 are under care and custody with the petitioner. The aforesaid facts have not been considered by the trial Court. The trial Court not even perused the documents filed by the petitioner and not even discussed about the respondents side documents. Without considering the aforesaid documents, the trial Court wrongly awarded maintenance amount to the respondents 2 and 3 herein. Therefore, the order of trial Court awarding maintenance for the petitioners 2 and 3 is liable to be set aside.

15.Now coming to the quantum of maintenance amount, already this Court discussed in previous paragraph that the petitioner is liable to maintain the first respondent. The trial Court also awarded a sum of Rs.4,000/- to the first respondent and considering the cost of living and facts and circumstances of the case, the



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maintenance awarded by the trial Court is reasonable one. Thereby, this Court also inclined to confirm the order of the trial Court with regard to quantum of amount awarded to the first respondent.

16.In the result, this Criminal Revision Case is partly allowed and the maintenance awarded to the first respondent is confirmed and the maintenance amount to the respondents 2 and 3 is set aside.

27.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Mrn

To

1.The Judicial Magistrate, Melur.



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P.DHANABAL, J.

Mrn

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