



CrI.R.C.(MD).No.412 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.12.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.RC(MD).No.412 of 2019
and
CrI.M.P(MD). No.5980 of 2019

N.Sanju Bhati

... Appellant/Respondent

Vs.

1. M.Suman Bhati

2. Kusum

(Minor represented by her guardian
mother 1st Respondent)

...

Respondents/Petitioners

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the order dated 21.08.2018 passed in M.C.No.17 of 2018 by the Learned Family Court Kanniyakumari Division at Nagarcoil and dismiss the said application.

For Petitioner : Mr.M.Rajaraman

For Respondents : Mr.S.Sureshkumar



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ORDER

The Criminal Revision Case is directed against the order passed in M.C.No.17 of 2018, dated 21.08.2018 on the file of the Family Court Kanniyakumari Division at Nagarcoil.

2.The petitioner/husband filed the revision petition challenging the maintenance order granted in favour of the respondents herein. The first respondent is the wife and second respondent is the female child. The first respondent alleged that the petitioner married the first respondent on 06.05.2013. At the time of marriage, the parents of the first respondent gave 800 gms of gold ornaments, 5 kgs of Silver, Shrivathana articles worth about Rs.5 lakhs and a sum of Rs.5 lakhs, at the instigation of the petitioner's family. Out of their wedlock, the second respondent was born on 30.05.2014. Thereafter, there was some dispute between the parties and hence, the first respondent left the matrimonial home on 27.02.2016. The first respondent stated that the petitioner is having a Granite Factory in the name and style of "Hare Balaji Exports" and earning more than a sum of Rs. 10,00,000/- per month and having asset about Rs.5 Crores. It is stated in



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the petition that there was a demand of additional dowry and she made a complaint before the Jurisdictional Police Station. Thereafter, there was some strained relationship between the parties and hence, the first respondent filed a petition in H.M.O.P No.87 of 2018 before the learned District Judge, Family Court, Kanniyakumari District, at Nagercoil, seeking restitution of conjugal rights. Pending the same, the first respondent had filed a maintenance case in M.C.No.17 of 2018, before the Family Court, Kanniyakumari Division, Nagercoil, claiming maintenance of Rs.30,000/- for her and Rs.20,000/- for the second respondent.

3.The said allegations made by the wife were denied by the husband and he specifically stated that the first respondent voluntarily left the matrimonial home. Further, she has not discharged her duty as wife. So he filed the divorce petition. In the above situation, he is not liable to pay maintenance amount.

4.To prove the maintenance, the first respondent namely wife examined herself and her father as P.W.1 and P.W.2 and marked Ex.P1 to P.



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13. The petitioner namely husband examined himself as R.W.1 and marked Ex.R1 to R8. The learned trial Judge considered the evidence and granted maintenance of Rs.10,000/- to the first respondent and Rs.7,500/- to the second respondent.

5.Challenging the same, the petitioner filed this revision and the learned counsel appearing for the petitioner submitted that the first respondent had filed a petition in H.M.O.P.No.87 of 2018 and the was allowed against which, the petitioner had preferred an appeal in C.M.A.(MD).No.691 of 2019. This Court passed the following order, dated 07.12.2022, in C.M.A.(MD).No.691 of 2019:

The husband, who suffered decree of restitution of conjugal rights in H.M.O.P.No.87 of 2018 filed by the wife, has preferred this appeal challenging the order dated 21.08.2018.

2.However, it appears that after one year, he decided to live with his wife and comply with the order of this Court. Hence, he filed a memo stating that he is ready to join with the respondent/wife and recording the



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memo, suitable orders may be passed.

3.The learned counsel appearing for the appellant produced the memo before this Court, which is undated.

4.On perusal of the notes, this Court finds that a conditional order was passed directing the appellant herein to pay the arrears of maintenance to the tune of Rs.4 lakhs, out of which, the appellant has paid Rs.2 lakhs. The conditional order being passed in Crl.R.C(MD)No.412 of 2019. Taking note of the said fact, this Court on 20.09.2019 directed the appellant to pay the balance arrears of maintenance and only thereafter, the matter will be taken up for consideration.

5.In such circumstances, this memo has been filed. It is very obvious that the appellant to avoid the payment of maintenance, has filed the memo to withdraw this appeal. In any case, it is the prerogative of the litigant to withdraw the appeal. This Court cannot stand his way.

6.Since the appellant has expressed his willingness to comply with the order of restitution of conjugal rights, this Civil Miscellaneous Appeal is dismissed. The said memo is recorded. No costs.



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6.The learned counsel appearing for the petitioner submitted that there is an agreement between the petitioner and the first respondent to get mutual divorce and also he suffered a lot, at the instance of the first respondent and her act of preferring complaint before the jurisdictional police station. Further, it is stated in the counter that he is not liable to pay the maintenance amount on the ground that she left the matrimonial home without any sufficient cause. Hence, he seeks to set aside the maintenance claim.

7.The learned counsel for the respondents submitted that as on date, the petitioner herein is earning more than a sum of Rs.10,00,000/- per month and he is also having asset worth about Rs.5 crores. The petitioner is duty bound to pay the maintenance amount to the respondents. The award passed by the Court below is very meager. Hence, he prayed to dismiss this case.



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8. This Court considered the rival submissions made on either side and perused the materials available on record.

9. The sum and substance of the submission of the petitioner is concerned, there is desertion on the part of the wife and hence, he is not liable to pay maintenance. The said submission is against the Law laid down by the Honourable Supreme Court in the case of ***Swapan Kumar Banerjee v. State of W.B.***, reported in ***(2020) 19 SCC 342***. The first respondent has not remarried. As per Section 125 of Cr.P.C., wife includes divorcee and she is entitled to claim maintenance till her remarriage. The Hon'ble Supreme Court discussed the same in detail in the above judgment and has held that even if divorce was granted on the ground of desertion, there is no bar to claim the monthly maintenance. The relevant paragraph of the judgment is as follows:

7. No doubt, as urged by Mr Debal Banerjee, Explanation II to Section 125 CrPC by deeming fiction includes a divorced woman to be a wife and, therefore, a woman who has been divorced by her husband can still claim maintenance under Section



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125 CrPC. The question is how we should read the provisions of sub-section (4) in this regard, especially when we deal with those women, against whom a decree for divorce has been obtained on the ground that they have deserted their husband. Once the relationship of marriage comes to an end, the woman obviously is not under any obligation to live with her former husband. The deeming fiction of the divorced wife being treated as a wife can only be read for the limited purpose for grant of maintenance and the deeming fiction cannot be stretched to the illogical extent that the divorced wife is under a compulsion to live with the ex-husband. The husband cannot urge that he can divorce his wife on the ground that she has deserted him and then deny maintenance which should otherwise be payable to her on the ground that even after divorce she is not willing to live with him. Therefore, we find no merit in the contention of Mr Debal Banerjee.

10.The Hon'ble Supreme Court laid the following guidelines in the case of ***Rajnish v. Neha***, reported in (2021) 2 SCC 324 to determine the monthly maintenance:



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- “1. Status of the parties.*
- 2. Reasonable wants of the claimant.*
- 3. The independent income and property of the claimant.*
- 4. The number of persons, the non-applicant has to maintain.*
- 5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.*
- 6. Non-applicant's liabilities, if any.*
- 7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.*
- 8. Payment capacity of the non-applicant.*
- 9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.*
- 10. The non-applicant to defray the cost of litigation.*
- 11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act.”*

11.The respondent pleaded that he is having Granite Factory in the name of “Hare Balaji Exports” at Bangalore and earning more than Rs.10,00,000/- per month and having assets about Rs.5 Crores. The petitioner admitted that he is running the said Granite Factory and specifically stated that he is earning only Rs.50,000/- per month. But, he failed to substantiate the same. The learned trial Judge considered the above



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aspect and correctly fixed the monthly maintenance of Rs.10,000/- to the first respondent and Rs.7,500/- to the second respondent, on the basis of the oral and documentary evidence. In all aspects the learned trial Judge correctly decided the entitlement of the respondents to claim maintenance from the petitioner, and reasonably fixed monthly maintenance of Rs. 17,500/- to the respondents and considering the earning capacity of the petitioner and needs of the respondents and social economic status of the parties and present day cost of living, this Court does not find any ground to differ with the findings of the learned trial Judge.

12. Accordingly, this Criminal Revision Case is dismissed. Consequently, the connected criminal miscellaneous petition is also closed.

08.12.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
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To

1. The Judge,
Family Court,
Kanniyakumari Division at Nagarcoil.
2. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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