



Crl.R.C(MD).No.430 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 06.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Boominathan

... Petitioner/Respondent

Vs.

1. Sathish @ Sathiswari

2. Kishore (Minor)

3. Pooja Sree (Minor)

... Respondents/Petitioners

(The respondents 2 & 3 are represented through their guardian / mother namely, the first respondent.)

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside to the order passed in M.C.No.37 of 2018 dated 04.04.2018, on the file of the Family Court, Sivagangai.

For Petitioner : Mr.R.Surianarayanan

For Respondents : Mr.P.Bala Subramanian



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ORDER

This petition has been filed to set aside the order passed by the Family Court, Sivagangai, in M.C.No.37 of 2018 dated 04.04.2018.

2. The petitioner the husband of the first respondent filed this revision challenging the maintenance order granted by the Family Court, Sivagangai.

3. The first respondent entered into marriage with the petitioner on 24.01.2007. Out of wedlock, the respondents 2 & 3 were born. Subsequently, there was some dispute between the petitioner and the first respondent. Hence, the first respondent lodged a complaint before the jurisdictional police on 29.05.2010. Since the petitioner refused to live with her, he filed HMOP.No.31 of 2014, before the Family Court, Sivagangai, seeking divorce and the same was dismissed. In the said circumstances, the first respondent filed maintenance petition. In that petition, it is stated that the petitioner is running finance business and earning more than Rs.50,000/- per month and he has a house and agricultural lands in Thayanur village. Further, he has a concrete house and a vacant land worth about Rs.5 lakhs in Annamalai Nagar, Sivagangai District. Hence, he has sufficient means to pay maintenance to the respondents and hence, she filed maintenance petition seeking maintenance of Rs.10,000/- for her and



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Rs.10,000/- each to her children.

4. The petitioner filed counter before the trial Court stating that the respondent has suppressed the earlier proceedings in M.C.No.8 of 2011 on the file of the learned Judicial Magistrate Court No.1, Sivagangai, and also the compromise memo filed in the said proceedings. As per said compromise memo, Rs.1 lakh was given to the first respondent as one time settlement. Insofar as the respondents 2 and 3 are concerned, the petitioner was ready to deposit Rs.1 lakh each to his children in fixed deposit in their names. But, subsequently, the first respondent did not agree for divorce by mutual consent and hence, the said memo was not acceded. In the said circumstances, he seeks 'for dismissal' of the maintenance petition.

5. To prove the maintenance claim, the first respondent examined herself as P.W.1 and marked the documents Ex.P.1 to Ex.P.11. The petitioner examined himself as R.W.1 and marked the documents Ex.R.1 to Ex.R.6.

6. The learned trial Judge after considering the submission of the learned counsel for the respondents and the learned counsel for the petitioner, dismissed the maintenance petition in favour of the first respondent and granted maintenance of Rs.3,000/- each to the respondents 2 and 3. Challenging the same, the petitioner/husband filed this revision.



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7. The learned counsel for the petitioner submitted that the first respondent suppressed the earlier proceedings in M.C.No.8 of 2011 on the file of the learned Judicial Magistrate Court No.1, Sivagangai and the memo filed in the said proceedings. It was submitted that the learned trial Judge accepting the portion of the memo and not accepting the other part of the memo is not in accordance with law. Hence, he seeks to set aside the order passed by the learned trial Judge by allowing this revision.

8. Per contra, the learned counsel for the respondents submitted that the petitioner did not adhere to the terms of memo in M.C.No.8 of 2011. The learned trial Judge considering the age of the children and their educational expenditure granted maintenance to the respondents 2 and 3.

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

10. Admittedly, till date the marriage between the petitioner and the first respondent is in force. The first respondent filed maintenance claim in M.C.No.8 of 2011. In the said petition, the following memo was filed:-



1990-1991 - 1991-1992

சிவன் ஸ்வாமி
சிவன்

28/3/97

உயல் தரவேண்டுமென்று தாமதமாகி வருவது கவனமாகக் கருதுகிறது.

சென்னை கி. பி. 1884 ஜூன் 15

சிறப்பில் எதிர்வெந்திருந்தால் உடனடியாக உத்தரவு பிறப்பித்து நடவடிக்கை எடுக்கப்படும்.

தேவதாசுரம் கையெழுத்தினை மதித்தபின்னர் அவருடைய
பேரில் சம்பந்தம் இல்லாதவரென உறுதி செய்து கொடுத்திருக்கிறார்.

₹ 1,50,000 (அறு லட்சம்) அளவிற்கு நிதியுதவி செய்து

தி. 1, 20, 000 (அதிக விலை) பெறப்பட்டது. இதுவே இவ்வாண்டு
இவ்வாண்டு இவ்வாண்டு இவ்வாண்டு இவ்வாண்டு இவ்வாண்டு இவ்வாண்டு இவ்வாண்டு
இவ்வாண்டு இவ்வாண்டு இவ்வாண்டு இவ்வாண்டு இவ்வாண்டு இவ்வாண்டு இவ்வாண்டு இவ்வாண்டு

பெரியபுத்தூர் தலாருள் சேர்ந்தவன் (பெரியபுத்தூர்) அமைதிபெற்று

தமிழ்நாடு சிவசுந்தரி நாயகி நாயகி

(உறுதிப்படுத்தப்பட்ட) தகவல் எண் 7 / இலாபக்கணிப்பு

மாண்புமிகு பேரவைத் தலைவர் அவர்களே, கீழ்க்கண்ட கேள்விகளுக்குத் தயவுசெய்து பதிலளிப்பாரா:

உய்யுதற்குரிய

உ-தேவையாதி.

மனதிலுள் தருள் செய்து கொள்வோம்.

I must.

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1957-58
25.4.58
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11. On the basis of the said memo, the learned counsel for the petitioner submitted that the respondents 2 and 3 namely, the minor children are entitled only Rs.1 lakh each and he also was ready to deposit Rs.2 lakh in their name. But, the learned trial Judge, without considering the same, granted maintenance to the respondents 2 and 3. To consider the said submission, this Court perused the memo. In the said memo, permanent alimony was provided only to the first respondent/wife alone. In the said memo, the petitioner has undertaken to deposit a sum of Rs.1,00,000/- each in the name of the second and third respondents in the fixed deposit. The said contents of the memo cannot be treated that the first respondent agreed to receive the permanent alimony, on behalf of the second and third respondents. As per the evidence of the petitioner, he has not paid any life time settlement maintenance amount to the second and third respondents, namely, minor children. The terms of the compromise entered in the earlier proceedings is not complied with. Apart from that in the earlier compromise memo no settlement was arrived at for permanent alimony on behalf of the minor children. In the said circumstances, the learned trial Judge correctly decided the issue against the petitioner.



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12. The petitioner is the father of the children. He is duty bound to maintain his children. The memo filed by the petitioner is not sufficient to disown the liability of the petitioner.

13. The learned trial Judge after considering the evidence of the petitioner and the first respondent and other documents granted only a sum of Rs.3,000/- to each respondent Nos.2 and 3. Considering the present day cost of living, social status of the parties and the first respondent has no source of income, the learned trial Judge correctly granted maintenance of Rs.3,000/- each to the second and the third respondents. In the said circumstances, this Court does not find any ground to differ with the findings of the learned trial Judge.

14. with the above observation, the learned Family Judge, Family Court, Sivagangai, in M.C.No.37 of 2018, dated 04.04.2018, is hereby confirmed and this Criminal Revision Case is dismissed.

06.11.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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1. The Judge,
Family Court,
Sivagangai.
2. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

dss

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