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Crl.R.C.(MD).No.1016 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2023

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THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.1016 of 2022
and Crl.M.P.(MD).No.12789 of 2022

Kamaraj

... Petitioner

Vs.

1.Selvashanthi

2.Minor K.Jai Akash

... Respondents

(2nd respondent represented through his next friend and mother first respondent)

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the proceedings made in M.C.No.17/2016 on the file of the Learned Judicial Magistrate No.1, Sivakasi, set aside the same.

For Petitioner : Mr.K.S.Muthu

For Respondents : Mr.N.Dilip Kumar
Government Advocate (Crl. Side)

ORDER

This Criminal Revision case has been filed against the proceedings made in M.C.No.17/2016 on the file of the Learned Judicial Magistrate No.1, Sivakasi.



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2. The facts in brief:

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The marriage between the husband and wife take place on 12.12.2010 as per their customary rites. After the marriage, they were living with husband's family in Madurai. Within a date from the marriage, the family members of the husband received all the jewels from the wife except Thirumangalyam. The above said jewels are in the hands of the husband. At the time of the marriage, the husband was working in IBM, Bangalore. On 14.12.2010, they shifted their residence to Bangalore. Thereafter, she became pregnant. At that time, she was ill-treated and harassed. A male child was born on 03.09.2011. She was staying with her parental home for about 9 months. She invited for compromise and went to Madurai and at that time, they demanded her signature in divorce document. By making false allegations, he filed divorce petition in H.M.O.P.No.585 of 2012, before the Family Court, Madurai. That was also decided *exparte*. The husband is working in the very same company and getting not less than Rs.1,00,000/- as monthly salary. Demanding Rs.10,000/- each the above said petition has been filed.

3. That was resisted by the husband stating that right from the marriage, the wife was not willing to live with the husband. On 22.01.2011,



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without informing any one, she left the matrimonial home. Later, they traced out her and taken to the house. Even after advise made by the elders, she did not correct herself. Again on 12.03.2011, without informing any one, she went to her parental home. Again, she was taken and left by her parents in the house of the husband. Again stating that she was pregnant, she went to her parental home. Thereafter, she has also filed a petition before the concerned Court for custody of the child.

4.At the conclusion of the enquiry, the trial Court has ordered payment of Rs.3,000/- each to the wife and the child from the date of the petition. Challenging the above said order, this revision has been preferred.

5.The marriage and the birth of the children are admitted. For making settlement the matter was referred to the Mediation, during the pendency of the revision. But, there was no settlement between the parties. Now as usual allegation and counter allegation are levelled against each other regarding the matrimonial issue.

6.The revision petitioner is suffering from loss of vision due to Retinal Pigmentosa Optic Nerve disease. That was also informed to the wife



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and only after the above said disclosure, the marriage was performed.

Whatever it may be, the allegation of the wife is that she was not taken proper care by the husband and she was ill-treated, etc. But, there is a counter allegation that only the wife misbehaved, used to went to her parental home frequently without informing him. It appears that it is a petty issue between them. What was the real issue between them has not been brought on record. But, however, the husband filed H.M.O.P.No.585 of 2012, before the Family Court, Madurai, seeking divorce on the ground of cruelty, wherein, the wife also appeared. But, however, it has been stated that he remained *exparte*. But it is not so. But, mid way, she did not appear before the matrimonial Court. So the evidence was closed and divorce was also granted by the order dated 25.01.2014.

7.Subsequent to that only the present petition was filed before the learned Judicial Magistrate No.I, Sivakasi, since the divorce has been granted nothing more is required for this Court to discuss about the reason of matrimonial issue. Suffice to say that now there is divorce between the husband and wife. Even though divorce was granted on the ground of cruelty and desertion, the trial Court relying upon several judgments found that the ground of desertion cannot be taken into account for refusing the



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maintenance. I find absolutely, no reason to differ from the above said view, since the view has been now well settled. So the husband can not go back to the original cause of action, for refusing maintenance. So the ground is not at all available to the revision petitioner.

8. Even though he is affected by the above said Optic Nerve disease, he is working in IBM, Bangalore. It is not denied by him. But in the assets and liabilities statement, he has denied the entire thing in the H.M.O.P. proceedings. He has also admitted that he was working in Bangalore. So the non disclosure of the above said fact of the shop and as well as the monthly salary shows that the revision petitioner is not ready to inform the Court the credit details. Now he is living with his parents due to the above said vision problem. But without any documentary evidence or corroborating evidence, his contention cannot be accepted.

9. The learned counsel for the petitioner would rely upon a number of judgments for the purpose of arguments that when the wife is living separately due to the voluntary desertion, she is not entitled for maintenance.

1. Judgment of the Punjab-Haryana High Court in the case of ***Teja Singh Vs.***



Smt.Choto,

2.Judgment of the Bombay High Court in the case of ***Sanjay Sudhakar Bosale Vs. Krishna,***

3.Judgment of this Court in the case of ***M.Chinna Karuppasamy Vs. Kanimozhi,***

4.Judgment of this Court in the case of ***K.Poovalagan Vs. J.Aruna Devi,***

5.Judgment of this Court in the case of ***Chinnavan Vs. Manimegalai,***

6.Judgment of this Court in the case of ***S.Vijayan @ Karupusamy Vs. Premalatha*** and

7.Judgment of this Court in the case of ***C.Samiselvakirubakaran Vs. S.Jessy.***

10.But from the facts and circumstances that have been narrated, I am of the considered view that the order of divorce that has been granted by the Family Court on the ground of cruelty, more specifically, when the wife did not participate till the conclusion of the enquiry should not stand in the way of granting maintenance. The trial Court has relied the judgment of the Honourable Supreme Court in the case of ***Dr.Swapankumar Baneyee Vs. The State of West Bengal*** reported in ***2019 (4) SCC 146***, and recorded the finding that that ground cannot be taken into account. I find absolutely no



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reason to differ from the above said view as stated above.

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11.Now coming back to the quantum. Only Rs.3,000/- each has been ordered as monthly maintenance to the wife and child, which is very meagre amount. Considering the job nature of the revision petitioner as well as the status of the parties, I find no merit, this petition deserves to be dismissed. Accordingly, dismissed. Consequently, connected miscellaneous petition is closed.

19.01.2023

Index : Yes / No
Internet : Yes / No
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To

1. The Judicial Magistrate No.I, Sivakasi.



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G.ILANGO VAN,J.

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