



Crl.RC.(MD).No.799 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.11.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC.(MD).No.799 of 2019

and

Crl.M.P.(MD).No.6675 of 2021

G.Shanthi

... Petitioner

Vs.

S.Govindan

... Respondent

(Amended as per order of this Court dated 06.10.2020 in Crl.M.P.(MD).No.2743 of 2020 in Crl.R.C.(MD).No.799 of 2019)

PRAYER : Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 20.01.2017 made in M.C.No.21 of 2011 before the Family Court, Madurai.

For Petitioner : Mr.M.Kamalini

For Respondent : Mr.R.Gowri Shankar,
Legal-Aid-Counsel



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ORDER

This Criminal Revision Case has been filed by the wife against the dismissal of her maintenance petition filed in M.C.No.21 of 2011, the order dated 20.01.2017, by the Family Court, Madurai.

2. The petitioner is the wife of the respondent. The petitioner filed a petition in M.C.No.21 of 2011. In the said maintenance case, even though, the respondent was served with notice, he did not appear. Hence, an ex-parte maintenance order was passed on 20.02.2012. To set aside the same, the respondent filed the petition in Cr.M.P.No.143 of 2013, with a delay of 464 days. The said petition was dismissed for default on 23.09.2016. Subsequently the present impugned order was passed by the learned trial judge, dismissing the maintenance petition on the ground that without sufficient cause, the petitioner parted the company of the respondent.

3.Challenging the same, the petitioner filed this criminal revision case and the learned counsel for the petitioner made the following submissions:

(i) the Court below passed the exparte maintenance order on 20.02.2012



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and the same reached finality on 23.09.2016 upon the dismissal by setting aside the petition filed to set aside the exparte order with the delay of 464 days.

(ii) the documents annexed with the petition clearly established that the petitioner had been suffering cruelty at the hands of the husband and hence, sufficient cause was established. She appeared and deposed before the Court below. The respondent has not appeared and there was no contra evidence on the side of the respondent. In the said circumstances, dismissal of the maintenance petition by the learned trial Judge is not in accordance with law. Hence, he seeks to set aside the impugned order.

4.Upon receipt of notice, the respondent has not appeared. Hence, this Court appointed Mr.R.Gowrishankar as a legal-aid-counsel. He made a detailed submission and specifically contented that the learned trial Judge rightly perused the pleadings and found that there was no pleadings relating to sufficient cause. Hence, he seeks to dismiss this petition.



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5. This court has considered the rival submissions made by the learned counsel appearing on either side and perused the material available on record.

6.The respondent filed the H.M.O.P.No.5 of 2007 seeking divorce. In the said proceedings, the learned trial judge directed to pay a sum of Rs.1,000/- as monthly maintenance. The same was also not paid. She filed the maintenance petition under Section 125 of Cr.P.C., before the Family Court, Madurai, claiming maintenance of Rs.20,000/-. The said petition in H.M.O.P.No.5 of 2007 was also dismissed for default. The counter affidavit was filed by the respondent on 25.02.2008. Thereafter he did not appear and ex-parte maintenance award was passed on 29.02.2012, granting monthly maintenance of Rs.10,000/- from the date of petition ie., 15.03.2011. Subsequently, the respondent filed the Cr.M.P.No.143 of 2020 to set aside the same with a delay of 464 days. The learned trial Judge, passed the following conditional order:

“Heard. Records perused. In the year 2011 the wife/respondent filed application for maintenance and the maintenance award also passed on 29.02.2012. Now he filed petition to set aside the exparte order along with condone the delay of 464 days. As per the contention of the respondent there is a arrears of maintenance amount more than Rs.3.lakhs.



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Considering his conduct and in order to give fair opportunity, the petition is ordered to be allowed and the respondent is directed to deposit the part of arrears of maintenance amount of Rs.20,000/-.

In the result, the petitioner is directed to deposit the part of arrears of maintenance amount of Rs.20,000/- before this Court on or before 19.12.2013 failing which the petition will be dismissed,

Call on 20.12.2013.”

7.Challenging the same, he filed the revision case before this Court and the same was also dismissed. After that the said petition was dismissed by the learned trial Judge by passing the following order on 23.09.2016:

“Petitioner absent

Respondent present

Petitioner is continuously absent, sufficient opportunity given to the petitioner. Hence, the petition is dismissed for default.”

8.When the order in M.C.No.21 of 2011 dated 20.02.2012 is not set aside in the manner known to law, the learned trial Judge has no jurisdiction to pass the present impugned order. This Court perused the records. The ex-parte order dated



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20.02.2012, still holds good. Therefore, the present impugned order is illegal one and hence, this Court is inclined to set aside the same.

9.Further, in paragraph No.11 of the petition, she clearly stated about the interim maintenance granted in the pending H.M.O.P., proceedings. Once the order was passed in the said proceedings, there is no question of independent proof of sufficient cause. In the petition she had annexed the documents ie., the pleadings of the H.M.O.P.NO.5 of 2007 and the counter filed in the interim maintenance petition. From the above annexed documents, it is clear that the petitioner has every reason to live separately and only due to the circumstances stated in the above pleadings she is staying away. In the said petition, she has made serious allegation against the respondent and the respondent also has made serious allegation against the petitioner. In the said circumstances, from the available materials, this Court feels that the petitioner has sufficient reason to live separately and claim the maintenance from the respondent. When, the respondent has failed to appear and produce any evidence to counter the testimony of the petitioner, the Court below committed error in dismissing the maintenance petition. In view of the dismissal of the H.M.O.P.No.5 of 2007 filed by the husband, the relationship is not disputed and the allegation made by the



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husband in view of the dismissal is found to be false and the petitioner has to stay away from the matrimonial home due to the cruelty caused by him. In view of the above discussion, this Court is inclined to set aside the impugned order passed by the Court below.

10. In the petition, it is alleged that the respondent was doing various business including money lending and earning more than a sum of Rs.30,000/- per month. Therefore, this Court is inclined to grant maintenance of Rs.10,000/- per month.

11. Accordingly this Criminal Revision Case stands allowed and the order passed by the learned Judge, Family Court, Madurai, in M.C.No.21 of 2011, dated 20.01.2017, is hereby set aside and the respondent is directed to pay a monthly maintenance of Rs.10,000/- from the date of filing of the said petition, ie., 15.03.2011. Consequently, connected miscellaneous petition stands closed.

24.11.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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Note: Issue Order Copy on 19.06.2024.



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To

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- 1.The Family Court,
Madurai.
- 2.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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