



Crl.R.C(MD)No.520 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.520 of 2019

and

Crl.M.P.(MD)Nos.6823 of 2019 and 5364 of 2023

C.P.Moses

... Petitioner/Respondent

Vs.

1.A.Nirmala

2.Minor M.Greta,

[2nd respondent minor is represented by her mother

and guardian, 1st respondent]

... Respondents/Petitioners

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the case in M.C.No.41 of 2017 on the file of the learned Chief Judicial Magistrate, Nagercoil and set aside the order dated 09.01.2018, which was subsequently transferred to the Family Court, Kanniyakumari District at Nagercoil.

For Petitioner : Mr.M.Suri

For Respondents : Mr.S.Sundarapandian



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ORDER

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This Criminal Revision Petition is directed against the order of maintenance passed in M.C.No.41 of 2017 by the learned Chief Judicial Magistrate, Nagercoil, dated 09.01.2018 and thereby, ordered maintenance of Rs.10,000/- each in favour of the respondents herein.

2.The learned counsel for the petitioner would submit that the petitioner was employed at Mumbai at the time of filing the petition for maintenance. The said fact was fully known by the respondents. Even then, in the maintenance case, the first respondent purposely mentioned the address of Nagercoil and no notice was served on the petitioner from the Chief Judicial Magistrate Court, Nagercoil in connection with M.C.No.41 of 2017 filed by the respondents herein. The petitioner was set exparte and exparte decree was passed as against him. He would further submit that the first respondent herself deserted the petitioner without any valid reason and as such, she is not entitled to have any maintenance. Behind his back, she obtained an order of maintenance under Section 125 of Cr.P.C. After constitution of Family Court, the said application was transferred to the file of the Family Court at Nagercoil, Kanniyakumari District. In the said petition, warrant was also issued



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as against the petitioner in order to execute the order of maintenance. Though the petitioner filed a petition for obtaining certified copy of the said order, it was returned for the reason "bundle is not available in the said Court". Therefore, the petitioner may be given one more opportunity to defend the case and prayed for setting aside the order of maintenance.

3.Per contra, the learned counsel for the respondents would submit that the first respondent got married the petitioner on 27.12.2007. It was an arranged marriage. Due to their wedlock, they have given birth to the second respondent. During the marriage, there was demand of dowry. After marriage, there was huge demand of dowry. Therefore, the petitioner harassed the first respondent. Thereafter, the petitioner has driven out the first respondent from her matrimonial home with the children. Hence, she also lodged a complaint as against the petitioner and the same was registered in Crime No.24 of 2011 for the offence under Section 498A IPC. After completion of investigation, the concerned police authorities filed a final report and the same has been taken cognizance in C.C.No.10 of 2014 on the file of the learned Judicial Magistrate No.II, Nagercoil and its pending for trial. Therefore, the petitioner had knowledge about the criminal case as well as the



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maintenance case filed by the first respondent. In fact, the petitioner refused to claim notice and as such, it was construed as sufficient service and the trial Court rightly awarded maintenance and it does not require any interference by this Court.

4.Heard the learned counsel appearing on either side and perused the materials available on record.

5.Admittedly, the petitioner got married the first respondent on 27.12.2007 and they gave birth to the second respondent. Thereafter, they got separated due to misunderstanding and also harassment made by the petitioner. The first respondent lodged complaint on so many occasions and the same was not considered by the concerned police authorities. Therefore, she was constrained to file a private complaint and sought for a direction under Section 156(3) of Cr.P.C. On such direction, the FIR has been registered in Crime No.24 of 2011 and subsequently charge sheeted and the same has been taken cognizance in C.C.No.10 of 2014 on the file of the learned Judicial Magistrate No.II, Nagercoil and it is pending for trial. Therefore, it is clear that there was cruelty committed by the petitioner and the first respondent was driven out from the matrimonial home with the child, namely, the second respondent.



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Therefore, it is true that the first respondent never deserted the petitioner and lived separately. Hence, she is entitled for maintenance. Insofar as service of notice is concerned, though the petitioner was employed at Mumbai, he had permanent address, which was mentioned in the petition. Therefore, the respondents rightly mentioned the permanent address of the petitioner and notice was issued to the said address. However, the petitioner refused to receive the same and as such, it was construed as sufficient service by the trial Court.

6.A perusal of the order of maintenance revealed that the trial Court considered the facts and circumstances and awarded maintenance on merits and thereby, directed the petitioner to pay maintenance of Rs.10,000/- each to the respondents herein.

7.The learned counsel for the petitioner would submit that now the petitioner is not working and he is under the care of his uncle. However, at the time of filing the petition for maintenance, he was working as a technical assistance in a private company. He was drawing salary of Rs.45,000/-. However, the first respondent has failed to prove the exact income of the petitioner by any material evidence.



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8.Considering the above facts and circumstances of the case, this Court is inclined to reduce the order of maintenance awarded by the Court below. Hence, the respondents are entitled to have maintenance of Rs.5,000/- each. Therefore, the order of maintenance awarded by the trial Court is reduced from Rs.10,000/- each to Rs.5,000/- each to the respondents herein.

9.Accordingly, this Criminal Revision Case is partly allowed. The order of the learned Chief Judicial Magistrate, Nagercoil in M.C.No.41 of 2017, dated 09.01.2018 is modified to the effect that the petitioner shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) each to the respondents as monthly maintenance. The respondents are at liberty to take appropriate steps to execute the order of maintenance as against the petitioner in the manner known to law. Consequently, connected miscellaneous petitions are closed.

31.03.2023

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

WEB COPY

- 1.The Chief Judicial Magistrate, Nagercoil.
- 2.The Section Officer,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

sjj

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