



Crl.RC.(MD).Nos. 527 & 241 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 12.09.2023

Pronounced on: 10 .11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **P.DHANABAL**

**Crl.RC.(MD).Nos. 527 & 241 of 2019
and Crl.M.P.(MD).Nos.6888 of 2019
& 2011 of 2020**

Crl.RC.(MD) No.527 of 2019

Srinivasa Raghavan

.. Petitioner

Vs.

1.M.K.Nandhini
2.Minor Krishna Prasad

...Respondents

PRAYER : Criminal Revision Petition is filed under Section 397 r/w. 401 of Cr.P.C., praying to call for the records in the order dated 02.02.2019, passed in M.C.No.154 of 2014 on the file of the Family Court, Trichy and set aside the same.

For Petitioner

: Mr.C.Dhanaseelan

For Respondents

: Mr.K.K.Senthil



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Crl.RC.(MD).No.241 of 2019

1.M.K.Nandhini

2.Minor Krishna Prasad

.. Petitioners

Vs.

Srinivasa Ragavan

...Respondent

PRAYER : Criminal Revision Petition is filed under Section 397 r/w. 401 of Cr.P.C., to call for the records in M.C.No.154 of 2014 on the file of the Family Court, Trichy and to set aside the portion of the order which refused maintenance to the 1st petitioner in M.C.No.154 of 2014 dated 02.02.2019 on the file of the Family Court, Trichy.

For Petitioners : Mr.K.K.Senthil

For Respondent : Mr.C.Dhanaseelan

COMMON ORDER

The Criminal Revision Petition in Crl.R.C.(MD) No.527 of 2019 has been filed by the petitioner/husband to call for the records in the order dated 02.02.2019, passed in M.C.No.154 of 2014 on the file of the Family Court, Trichy and set aside the same.

The Criminal Revision Petition in Crl.RC.(MD).No.241 of 2019 has been filed by the petitioner/wife and child to call for the records in M.C.No.154 of 2014 on the file of the Family Court, Trichy dated 02.02.2009 and to set aside the portion of the order which refused maintenance to the 1st petitioner.



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2. Both the Criminal Revision cases are arising out of the same order passed by the learned Judge, Family Court, Trichy dated 02.02.2019, wherein the revision petitioners in Crl.R.C.(MD).No.241 of 2019 have filed a case in M.C.No.154 of 2014 under section 125 Cr.P.C., on the file of the Family Court, Trichy for the relief of maintenance of Rs.25,000/- per month to the first petitioner and Rs. 50,000/- per month to the second petitioner. The trial Court has awarded a sum of Rs.25,000/- towards maintenance for the second petitioner and in other aspects, the petition was dismissed. As far as the first petitioner is concerned, the petition was dismissed.

3. The case of the petitioners in M.C.No.154 of 2019 is that the marriage between the first petitioner and the respondent was solemnized on 28.11.2003 at Trichy. At the time of marriage, 50 sovereigns of gold ornaments and Rs.3.00 lakhs worth house hold articles were given to the first petitioner by her parents, 3 sovereigns of gold ornaments were presented for the respondent. Further, the parents of the first petitioner incurred a sum of Rs.1,25,000/- towards marriage expenses. At the time of marriage, on the side of the respondent, it was represented that he was doing business but, in fact, the respondent was depending the income of his father.



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(i) After 2005, the respondent was running a Company in the name of EUC Tech. In the name of business, the respondent used to stay outside as business tour. The respondent tortured the first petitioner by showing the CDs and to act as found in the CD. Thereafter, the respondent compelled the first petitioner to go for counselling before the Doctor and the same was refused by her. In the year 2009, as she got conceived, the first petitioner went to her parents house at Trichy. At the time, the respondent failed to take the first petitioner to hospital.

(ii) In the year 2010, the respondent compelled the first petitioner to give consent for divorce. Thereafter, on 28.7.2010, a male child was born to them. The respondent not even attended the naming function of the child. In the month of December 2010, the respondent asked the first petitioner to handover the child to him. When the same was refused by the first petitioner, the respondent threatened her that if they lived together then in his house, the stove will burst and she also would burn in the stove. Since the first petitioner also worked in the respondent's company, they purchased a vacant land jointly in their name. Further, the respondent harassed the first petitioner to give the half share to him. The respondent is earning a sum of Rs.2,00,000/- per month. The second petitioner is studying and thereby, she is paying Rs.30,000/- as school fees.



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Therefore, the respondent is liable to pay Rs.25,000/- per month towards maintenance to the first petitioner and Rs.50,000/- per month towards maintenance to the second petitioner.

4. The case of the respondent is that he admitted the relationship of the parties and birth of the second petitioner. The respondent never demanded dowry from the first petitioner. At the time of marriage, the parents of the first petitioner gave 30 sovereigns of gold ornaments to her and 3 sovereigns of gold ornaments to the respondent. The first petitioner had not co-operated for the family life and she stated that she is unfit for family life and due to compulsion made by her parents, she accepted for the marriage. The above said facts were brought to the knowledge of the parents of the first petitioner and they told to wait some more time. After five years from the marriage, in the year 2008, the first petitioner was taken to fertility centre and counselling was given. Thereafter, she was taken for tour to tourist places, despite, first petitioner refused to lead family life.

(i) In the year 2009, the respondent purchased a plot at Valarpuram, Chennai in the name of the first petitioner. Subsequently, the first petitioner got conceived and then she went to her parents house. Thereafter, she never returned from her parents



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house. On 28.7.2010, a male child was born to them, at that time, the respondent stayed in the hospital and helped the first petitioner. The first petitioner and the respondent decided to select the name to their child as Aniruth. Thereafter, due to advise of the sister of the first petitioner, the first petitioner named the child as Krishna Prasath. Thereafter, compromise talks were going on, but the first petitioner and her parents have not come for amicable settlement.

(ii) Further, the first petitioner did not allow him to see his child. Due to that, he suffered depression and unable to concentrate in his work and thereby, he paid a sum of Rs.18,00,000/- to the company for the loss. In the month of December 2013, he was removed from the job. The first petitioner and the parents of the first petitioner insulted the respondent. Now the respondent is earning a sum of Rs.50,000/- and he has to take care of his parents. Already, complaint was given for re-union before the All Women Police Station, but the first petitioner represented that after three months, she would come. But thereafter, she refused to come with respondent. Since the first petitioner left the matrimonial home without any reason, she is not entitled to get maintenance from the respondent. Therefore, the petition is liable to be dismissed.



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5. In order to prove the case of the petitioners, she herself examined as P.W.1 and marked Exs.P1 to P6. On the side of the respondent, they have examined R.Ws.1 and 2 and marked Exs.R1 to R12. After elaborate discussion, the trial Court has allowed the application in part and awarded a sum of Rs.25,000/- as maintenance towards the second respondent and as against the first respondent, the petition was dismissed.

6. The grounds raised in Crl.R.C.No.241 of 2019 are as follows:-

The order of the family Court refusing to grant maintenance to the 1st petitioner who being the legally wedded wife of the respondent, is ex-facie illegal and contrary to law and facts. The family Court erred in holding that the 1st petitioner had voluntarily deserted the respondent and hence, she is not entitled for the maintenance. The Court below failed to consider that it is the duty of the husband to maintain his wife and children and when that being so, the Court below erred in declining the relief to the 1st petitioner.

7. The grounds raised in Crl.R.C.No.527 of 2019 are as follows:-

The order passed by the lower Court is materially irregular and unsustainable in law and liable to be set aside. The trial Court has



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erred in fixing the quantum of maintenance amount as Rs.25,000/- to the second respondent without considering the petitioner's family situation and his financial commitments. Further the second respondent is a minor boy, aged about 9 years and now studying in 4th standard in Trichy and thereby, awarding of maintenance of Rs. 25,000/- is unreasonable and exorbitant. The lower court failed to consider the documents Exs.R2 to R5 and the petitioner has no taxable income in his business. The trial Court failed to consider Ex.R10 that he paid Rs.18,00,000/- and odd towards compensation to the company called DMG.

(ii) The lower Court ought to have considered the fact that on 23.12.2013, vide Ex.R9, the petitioner's service has been terminated by the software company called Open Mind CAD/CAM Technologies India Pvt.Ltd at Bangalore. The Trial Court failed to consider that the petitioner has to take care of his age old ailing parents. The lower Court correctly held that the 1st respondent is living separately without any sufficient reasons, but, failed to consider that the petitioner is earning only a meager amount and thereby he cannot pay such huge amount of Rs.25,000/- per month. The trial Court failed to consider that the petitioner had already gifted 6 sovereigns of gold and the same has been admitted by the first petitioner in her evidence. Further, the petitioner and first respondent jointly



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purchased a house site in Vasan Nagar, Valarpuram, Sri Perumbudur, Kancheepuram District and the same is worth about Rs.10,00,000/- at present. The second respondent does not require the quantum of Rs. 25,000/- per month.

8. The learned counsel appearing for the petitioners in Crl.R.C.No.241 of 2019 and respondents in Crl.R.C.No.527 of 2019 would contend that the respondent/husband has not denied the relationship of the parties and he also admitted that the parties are living separately. Due to harassment made by the respondent/husband, the petitioners have left the matrimonial home and staying with the parents of the first petitioner/wife. The respondent/husband abandoned the petitioners and thereby, the petitioners have filed the maintenance petition.

(i) Already, the respondent herein filed a petition for divorce and the same was dismissed for non prosecution, which shows that the respondent only neglected the petitioners and he has no intention for re-union. The trial Court failed to consider that the respondent/husband is not willing to live with the petitioners and thereby the finding of the trial Court that the petitioner has deserted the respondent is in-correct. When the trial Court awarded maintenance for the second petitioner, the trial Court ought to have



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awarded the maintenance for the first petitioner also on the ground of desertion by the respondent/husband. The trial Court failed to consider that the first petitioner is entitled to maintenance from her husband, who is the respondent herein and wrongly dismissed the application as against the first petitioner.

(ii)Further, the trial Court, after analysing the evidence, correctly awarded maintenance to the second petitioner for a sum of Rs.25,000/- depending upon the cost of living and the needs of the second petitioner, but failed to consider the maintenance amount for the first petitioner. Therefore, the revision petition in Crl.R.C.No.241 of 2019 is liable to be allowed and Crl.R.C.No.527 of 2019 is liable to be dismissed.

9. The learned counsel appearing for the petitioner in Crl.R.C.No.527 of 2019 and the respondent in Crl.R.C.No.241 of 2019 would contend that the trial Court correctly dismissed the application as against the first respondent, but at the same time, failed to consider the quantum of award amount awarded for the second respondent, which is too high. The petitioner is earning only a sum of Rs.50,000/- per month and also has to take care of his age old and ailing parents. At the same time, the first respondent is M.Com., post



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graduate and was also earning a sum of Rs.35,000/- per month through private employment. However the maintenance awarded towards the second respondent is too high. Therefore, the award amount passed by the trial Court in favour of the second respondent is liable to be modified. Therefore, the petition in Crl.R.C.No.527 of 2019 is liable to be allowed and Crl.R.C.No.241 of 2019 is liable to be dismissed.

10. Upon hearing both sides and perusing the judgment of the trial Court and grounds of appeal and other records, the points for determination are:

(i) In Crl.R.C.No.241 of 2019, whether the judgement of trial Court passed in M.C.No.154 of 2014 by dismissing the claim of the first petitioner is sustainable in law and on facts.

(ii) In Crl.R.C.No.527 of 2019, whether the order passed by the trial Court in M.C.No.154 of 2014 in respect of awarding maintenance of Rs.25,000/- towards the second petitioner is sustainable in law and on facts.

11. This Court heard both sides and perused the records. On a perusal of the records, it is observed that in this case there is no



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dispute with regard to the relationship of the parties. The petitioner in Crl.R.C.No.527 of 2019 and the respondent in Crl.R.C.No.241 of 2019, i.e., the husband has also admitted that his wife and son are not residing with him and they are residing with the parents of the first respondent/wife.

12. The contention of the petitioners in Crl.R.C.No. 241 of 2019 and the respondent in Crl.R.C.No.527 of 2019 is that the respondent being the husband of the first petitioner and the father of the second petitioner, has neglected the petitioners without any valid reasons and the petitioners are living with the parents of the first petitioner. The respondent is earning a sum of Rs.2,00,000/- per month and thereby he is liable to pay the maintenance to the petitioners.

13. The contention of the respondent in Crl.R.C.No.241 of 2019 and the petitioner in Crl.R.C.No.527 of 2019 is that the first petitioner left the matrimonial home without any valid reasons and residing in her parents house. The further contention is that she is well educated and earning a sum of Rs.35,000/- per month by private employment and able to maintain herself. Therefore, the first petitioner is not entitled to maintenance and the quantum of maintenance awarded to the second petitioner is too high.



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14. In this context, before the trial Court, on the side of the petitioner/wife, she herself was examined as P.W.1 and marked as Exs.P1 to P6 and on the side of the respondent, they have examined R.W.1 and R.W.2 and marked Exs.R1 to R12.

15. P.W.1 filed proof affidavit stating that she is unable to maintain herself and she is paying school fees for her child to a sum of Rs.30,000/- and without any valid reasons, the respondent is residing separately. Further, the respondent harassed the petitioners and totally neglected them and thereby, he is liable to pay maintenance to the petitioners. P.W.1 in her cross examination stated that she is not willing to live with the respondent and prior to the marriage, she was working under one auditor Jeyaraman. She came to her parents home in the month of April 2010. Thereafter, in the month of July 2010, she gave a birth to a male child and did not return to her matrimonial home. Therefore, from the evidence P.W.1, it reveals that she is not ready to live with the respondent and there is no sufficient evidence with regard to the cruelty caused by the respondent.

16. Further, on the side of the respondent, he himself examined



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as R.W.1 and he also deposed that he is only earning a sum of Rs. 50,000/- per month and he has to maintain his age old parents and his earnings are not sufficient to run his family and he is ready to pay maintenance to the son of the second respondent. The first petitioner who is wife, without any valid reasons, left matrimonial home. Further, she was earning a sum of Rs.35,000/- per month and she is capable of maintaining herself and thereby, she is not entitled to any maintenance from the respondent. In view of the above said evidence, it is clear that the first petitioner is not ready to live with the respondent and she is also able to maintain herself. Hence, the first petitioner is not entitled for maintenance from the respondent. However, respondent is liable to maintain his son, who is second petitioner herein.

17. Considering the cost of living and monthly income of the respondent, it is appropriate to award sum of Rs.25,000/- towards maintenance to the second petitioner. The trial Court also in the order, elaborately discussed about the evidence adduced on both sides and correctly refused to award maintenance to the first petitioner and also awarded a sum of Rs.25,000/- to the second petitioner. The order of trial Court is a well-reasoned one and no infirmity is found in the impugned order passed by the trial Court.



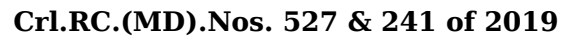
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18. The learned counsel appearing for the petitioners in Crl.R.C.No. 241 of 2019 and the respondent in Crl.R.C.No.527 of 2019 had relied on the following judgments:

(i) In the judgement in Bhuwan Mohan Singh Vs.Meena and others, reported in (2015) 6 SCC 353, on a careful perusal of the judgement, it is clear that it is sacrosanct duty to render financial support even if husband is required to earn money with physical labour, if he is able-bodied. There is no escape route, unless there is an order from Court that wife is not entitled to get maintenance from husband on any legally permissible grounds. In this case on hand also, the first petitioner/wife of the respondent is capable of maintaining herself and she, without any valid reasons, left the matrimonial home and not ready to live with the respondent and thereby, she is not entitled for maintenance. Therefore, the above said case will not be helpful to decide the case in favour of the petitioner/wife.

(ii) In the judgment in Anuradha Samir Vennangot Vs. Mohandas Samir Vennangot, reported in (2015) 16 SCC 596, on a careful perusal of the judgment, it is clear that it is the duty of the



In the case on hand, already this Court has decided in the previous para that the first petitioner/wife left the matrimonial home without any valid reasons and lived separately and she is also earning a sum of Rs.35,000/- per month and thereby, she is able to maintain herself. Hence the above said case will not be applicable to the present facts of the case. Therefore, this Court need not interfere with the impugned order of the trial Court. Therefore, Crl.R.C.Nos.527 and 241 of 2019 are liable to be dismissed and the impugned order passed by the trial Court in M.C.No.154 of 2014 with regard to the awarding of maintenance of Rs.25,000/- per month to the minor child and dismissing the claim of 1st petitioner are confirmed.

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hereby confirmed. Consequently, connected miscellaneous petition
are closed.

10.11.2023

Index: Yes/No
NCC : Yes/No
Speaking Order: Yes/No
mpa

To

1. The Judge, Family Court, Trichy.
2. The Section Officer,
Criminal Section, Madurai Bench of Madras High Court,
Madurai.



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mpa

Pre-Delivery orders in

**Crl.RC.(MD).Nos. 527 & 241 of 2019
and Crl.M.P.(MD).Nos.6888 of 2019 & 2011 of 2020**

10.11.2023