



Crl.R.C.(MD).No.903 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

Crl.R.C(MD).No.903 of 2023

and

Crl.M.P(MD).No.11912 of 2023

Senthil Kumar ... Petitioner/Respondent

Vs.

1.Sivashankari

2.Minor.Sivamurugan

3.Minor.Mahanisha ... Respondents/Petitioners

(The Respondents 2 & 3 are represented through their mother and guardian viz., the 1st Respondent herein)

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to call for the records of the Family Court, Sivagangai District, in M.C.No.5 of 2023 and set aside the order dated 23.02.2023.

For Petitioner : Mr.M.Anbarasi

For Respondents : Mr.A.Gopal

ORDER

This Criminal Revision case is filed against the judgment passed in M.C.No.5 of 2023 on the file of the Family Court, Sivagangai District, dated 23.02.2023.



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2.The petitioner filed this Revision challenging the maintenance order dated 23.02.2023, in M.C.No.5 of 2023 on the file of the learned Judge, Family Court, Sivagangai District, granted in favour of his wife/first respondent and his children.

3.The first respondent filed M.C.No.5 of 2023 stating that the petitioner married the first respondent on 23.04.2007. Out of the wedlock, the second and third respondent were born. After marriage, the petitioner caused cruelty to the first respondent by demanding dowry. Further, he did not give any amount to maintain the family. In such circumstances, on 22.12.2020, he said to have assaulted the first respondent and caused injuries to the first respondent. Therefore, a complaint was made before the jurisdictional police. In addition to that, the petitioner also made doubt over her conduct and driven out her along with children from the matrimonial home on 12.01.2021. After that, he filed HMOP.No.235 of 2022 for divorce with false allegation. The petitioner is working as an Engineer in foreign country and earn more than Rs.1,50,000/- and he has a house and lands in his village. Since the first respondent unable to maintain herself and her children, she filed M.C.No.5 of 2023 seeking the total maintenance of Rs.35,000/-.



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4. The petitioner filed counter by denying the allegation made in the petition and he alleged that the first respondent has illegal contact with the one person and the same was questioned by him. Therefore, the first respondent in her own volition, left the matrimonial home after throwing the Mangalsutra. Thereafter, she lodged a complaint before the jurisdictional police with the false allegations. The petitioner never demanded any dowry as alleged in the complaint. The allegation that the petitioner has number of properties is not true. The said properties are his father's self acquired properties. The petitioner further stated that he is working as the construction labour and earning only a sum of Rs.23,000/- per month. He also suffered from the heart ailment and to conduct the heart surgery, he is required more than Rs.7,00,000/-. Therefore, he seeks dismissal of the maintenance petition.

5. The learned trial Judge after considering the oral evidence of the first respondent and the petitioner and Ex.P.1 to Ex.P.7 and Ex.R.1 to Ex.R.7, granted maintenance of Rs.5,100/- to the first respondent and Rs.3,300/- to the respondents 2 and 3 each. In addition to that, he also directed to deposit Rs.8,300/- to the second respondent and Rs.5,800/- to the third respondent towards education expenditure per month.



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6. Aggrieved against the same, the present Revision has been filed by the petitioner.

7.The learned counsel for the petitioner submitted that the petitioner is suffering from the heart problem and it requires operation. The petitioner further submitted that he is working as the construction worker and earning only Rs.23,000/-. Therefore, he is not in a position to maintain himself. He is also duty bound to maintain his parents. Hence, the order passed by the Court below is liable to be set aside.

8.The learned counsel for the respondents submitted that the petitioner himself filed HMOP before the Court below seeking divorce with the false allegations against the first respondent. Since the petitioner caused cruelty to the first respondent, she left the matrimonial home along with the children. The learned trial Judge after considering the income of the petitioner granted only the minimum amount as maintenance. Further, the learned trial Judge after appreciation of evidence held that the petitioner never established the income source of the first respondent. Therefore, the order of the learned trial Judge is in accordance with law and hence, he seeks dismissal of this petition by



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confirming the maintenance award passed by the Court below.

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9.This Court considered the submission of the both parties and perused the records and the impugned order.

10.Admittedly, there is no dispute relating to the relationship between the parties. From the records, it is clear that the petitioner filed HMOP.No.235 of 2022 seeking divorce with the allegation against the first respondent and the same was denied by the first respondent. In view of the rival allegation, it is not necessary for this Court to go into the matrimonial disputes between the parties in detail in the summary proceedings, more particularly, when the HMOP filed by the petitioner to dissolution of marriage is pending before the competent Court. Further, it is settled principle that during the pendency of the divorce proceeding initiated by the husband, he duty bound to pay the maintenance to his wife. Hence, it is the duty of the petitioner to pay the maintenance to the first respondent. Since the petitioner admitted the relationship, as a father of the respondents 2 and 3, he duty bound to maintain them.

11.The petitioner admitted that he received the amount of



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Rs.23,000/- per month. He also admitted that he has number of immovable properties in his name and also has number of joint family properties. Among the number of properties, number of houses also there. Hence, he has sufficient income to maintain the respondents. Further, he has not adduced any evidence to prove the income of the first respondent. The learned trial Judge also categorically held that the petitioner bound to maintain the respondents by selling the properties stands in his name. The learned trial Judge considered the oral and documentary evidence, granted maintenance by taking Rs.240 as a expenditure of daily food and Rs.300/- as medical expenditure and Rs. 300/- for clothing expenditure. The said award itself is very meagre while comparing the living cost of the present day. Hence, this Court does not find any perversity in the order passed by the learned trial Judge.

12. It is well settled principle that the petitioner is duty bound to maintain the first respondent and his children. When the trial Court considered all the aspects in granting maintenance, this Court has no power to interfere in the quantum of maintenance as held by the Hon'ble Supreme Court judgment in **Rajathi v. C. Ganesan reported in AIR 1999 SC 2374:-**



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“12. It was not necessary for the High Court to examine the whole evidence threadbare to exercise jurisdiction under Section 482 of the Code. Rather in a case under Section 125 of the Code the trial court is to take a prima facie view of the matter and it is not necessary for the Court to go into the matrimonial disputes between the parties in detail. The section provides maintenance at the rate of Rs 500 per month. There is an outcry that this amount is too small. In the present case, however, we are quite surprised that the Court granted a paltry amount of Rs 200 per month as maintenance which was confirmed in the revision by the Sessions Court and the High Court thought it fit to interfere under Section 482 of the Code in exercise of its inherent jurisdiction.”

13. Accordingly, this Criminal Revision Case is dismissed.

Consequently, the connected miscellaneous petition is closed.

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NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
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K.K. RAMAKRISHNAN. J.,



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To

1. The Family Court,
Sivagangai District.
2. The Section Officer,
Record Section (CrI.)
Madurai Bench of Madras High Court, Madurai.

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and
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