



Crl.R.C(MD)No.236 of 2018

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.236 of 2018
and
Crl.M.P(MD)No.3055 of 2018**

Prabu @ Prabhakaran

... Revision Petitioner/
Appellant

Vs.

A.Kavitha

... Respondent/
Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records in C.A.No.7 of 2016, dated 17.01.2018 on the file of the Additional District Court (Fast Track Court), Kumbakonam, against the order passed in M.C.No.6 of 2014, dated 20.01.2016 on the file of the Judicial Magistrate Court, Kumbakonam and set aside the same.

For Petitioner : Mr.T.K.Gopalan

For Respondent : Mr.G.Karnan



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ORDER

This revision has been filed to set aside the order passed in C.A.No.7 of 2016, dated 17.01.2018 on the file of the Additional District Court (Fast Track Court), Kumbakonam, against the order passed in M.C.No.6 of 2014, dated 20.01.2016 on the file of the Judicial Magistrate Court, Kumbakonam.

2.The case of the prosecution is that the respondent filed a petition under the Domestic Violence Act as against the petitioner and his aged parents before the learned Judicial Magistrate, Kumbakonam and the same was numbered as M.C.No.6 of 2014. The trial Court, ordered to pay a sum of Rs.10,000/- as maintenance amount to the respondent and a sum of Rs.5,000/- each to the children. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.7 of 2016 on the file of the Additional District Court (Fast Track Court), Kumbakonam.

3.The case of the respondent is that in the year 1996, she got married with the petitioner herein. During the marriage, her parents had presented 75 sovereigns of gold jewels to the respondent, 12-1/2 sovereigns of gold jewels to the petitioner,



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household articles worth about Rs.2,00,000/- and also borne out the entire marriage expenditure by the respondent's family. In fact, after verification of the entire jewels, the parents of the petitioner were allowed to have the first night. After five months, they had set up a separate house. The petitioner used to scold her with filthy language and also compelled her to have a sexual relationship as per pornography. He always suspected her fidelity and used to beaten her. He also compelled her to give divorce. Furthermore, he threatened and compelled her to see pornography videos and had sexual intercourse like an animal. He never allowed the respondent to see her relatives and visit her parents' house. In the year 2008, he also tortured her and demanded huge dowry from the parents of the respondent and also received a sum of Rs.12,00,000/- as dowry. Therefore, she lodged a complaint under the Domestic Violence Act as against the petitioner and his parents and the same has been taken on file in M.C.No.6 of 2014 on the file of the Judicial Magistrate Court, Kumbakonam.

4.In order to prove the same, the respondent had examined herself as P.W.1 and marked Exs.P.1 to P.8 and on the side of the petitioner, no one was examined and marked Exs.R.1 to R.10.



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5. On perusal of the oral and documentary evidence, the trial Court partly allowed M.C.No.6 of 2014 and ordered maintenance of Rs.10,000/- in favour of the respondent and ordered a sum of Rs.5,000/- each to her two children. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.7 of 2016 on the file of the Additional District Court (Fast Track Court), Kumbakonam and the same was also dismissed, confirming the order passed by the trial Court. Hence, the present revision.

6. The learned counsel appearing for the petitioner would submit that the respondent is a millionaire, and she had enough properties to maintain herself. The petitioner has no grievance to pay maintenance to the respondent and his children. The respondent voluntarily deserted the petitioner and is living separately. Therefore, she is not entitled to any maintenance. There is absolutely no allegation as against the petitioner. In fact, she filed divorce petition and the same was dismissed for default in I.D.O.P.No.27 of 2014 on the file of the Principal District Court, Thanjavur. She also lodged a complaint for the offence punishable under Sections 498-A, 406 and 294(b) of I.P.C and the same has been taken cognizance in C.C.No.538 of 2014 on the file of the



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Additional Mahila Court, Madurai and ended in acquittal by Judgment, dated 04.01.2023. No allegation is proved as against the petitioner and as such, the respondent is not entitled for any maintenance.

7.The learned counsel appearing for the petitioner further submitted that the petitioner is illiterate and he has no such income as alleged by the respondent. He is dependent of his parents and as such, he cannot able to pay any maintenance as awarded by the Courts below. He is earning only a sum of Rs.300/- to Rs.700/- per day and he has no other income from any business as alleged by the respondent.

8.The learned counsel appearing for the petitioner would further submit that the petitioner has seen some pornography photographs in the cell phone of the respondent which was sent by her sister's husband. When it was questioned by him, she immediately deserted the petitioner and went to her parents house. The only reason for her separation is that the petitioner questioned the photograph found in her cell phone. Therefore, he prayed for setting aside the order passed by the Courts below.



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9.Per contra, the learned counsel appearing for the respondent would submit that the petitioner is a cruel man, and he committed a very serious and heinous offence as against the respondent by compelling her to have sexual intercourse as per pornography. He also compelled her to watch pornography movies and videos and compelled her to have sexual intercourse in front of their children. He also demanded huge dowry and he tortured to the core. Therefore, she was driven out from the matrimonial home along with two children. In fact, the first girl child now attained majority and she is physically handicapped and her son is doing +2 and as such, he could not able to maintain themselves since she has no other source of income. Once upon a time, her parents were healthy persons, and now they lost everything, and they have no income to support the respondent and her children. Even after the order passed by the Courts below, the petitioner failed to pay any monthly maintenance so far, except for some deposit of a very meagre amount. The petitioner is being the father of two children, he never had taken any steps to see his own children. He never invested any money in their favour and he did not even spend single paise in their favour. Therefore, the Courts below rightly ordered maintenance and prayed for dismissal of the revision.



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

11. On perusal of the complaint lodged by the respondent under the Domestic Violence Act, all the allegations are very serious in nature, and he committed cruelty to the respondent herein by compelling her to have sexual intercourse as per the pornography. It is also seen that when the respondent's sister's husband had sent photographs of her two children some advertisements also reflected and the same was touched by him, and it had gone to some link. Therefore, no photograph was sent by anybody to the respondent.

12. That apart, the petitioner is a businessman and he is doing Banana auction business and he used to procure Banana from all the agriculturists and he is a wholesaler. He also had agricultural property and he had huge income. Whereas, the respondent had no source of income in order to maintain herself and to maintain her two children. In fact, the petitioner has no objection to maintaining



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his children and he is disputing the award of maintenance in favour of the respondent alone. Though her parents were wealthy at the time of their marriage, now they have no source of income and they are not in a position to maintain the respondent and her children. In fact, even assuming that her parents are wealthy, the petitioner is being the husband and he is duty-bound to maintain his wife and children. Though the petitioner was acquitted from the charge under Sections 498-A, 406 and 294(b) of I.P.C it would not mean that the petitioner did not commit any cruelty to the respondent. The trial Court acquitted the petitioner and two others for the reason that the prosecution failed to prove its case beyond any doubt. Therefore, only because of the cruelty committed by the petitioner, the respondent was driven out from the matrimonial home along with two children. Therefore, this Court finds no infirmity or illegality in the order passed by the Court below and the revision is liable to be dismissed.



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13. Accordingly, this Criminal Revision Case is dismissed.

The respondent is at liberty to take appropriate steps to execute the order of maintenance in the manner known to law. Consequently, connected Miscellaneous Petition is closed.

31.03.2023

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

1. The Additional District Court
(Fast Track Court),
Kumbakonam.
2. The Judicial Magistrate Court,
Kumbakonam.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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