



Crl.R.C.(MD).No.960 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2023

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THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.960 of 2022
and Crl.M.P.(MD).No.12163 of 2022

Muthupandi

... Petitioner

Vs.

1.Rajapriya
2.Minor Pugazh Azhagan
3.Minor Pavith Kumar

... Respondents

(2nd and 3rd respondents through their natural guardian and her mother 1st respondent)

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records of the Family Court, Ramanathapuram District in M.C.No.15 of 2022 and set aside the order, dated 17.08.2022.

For Petitioner : Mr.M.Pandian

For Respondents : Mr.K.R.Manimaran

ORDER

This Criminal Revision Case has been preferred against the order dated 17.08.2022, passed in M.C.No.15 of 2022 on the file of learned Judge, Family Court, Ramanathapuram.



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2.The brief facts in brief:

On 09.03.2017, the marriage between the husband and wife was performed as per their customary rites in the house of the wife. Because of the marriage two children were born to them. The husband was working as a Secondary Grade Constable in Police Department. Right from the marriage, he was not taking proper care of the family and used to come to the house in drunken mood and used to pick up quarrel with the wife. He also demanded dowry and assaulted to have un-natural act. In February 2019, for the purpose of constructing a new house, he demanded 35 sovereigns of gold jewels and that was also given and the above said jewels were pledged with Vijaya Bank, Ramanathapuram. Later that was not redeemed. Over the habit and conduct of the husband, the wife gave complaint to the higher officials. But, even after that the husband did not correct himself. Now, he is working as a Secondary Grade Constable in Thirupalaikudi Police Station and get salary of Rs.45,000/-. Apart from that he has also getting income from his lands. Claiming maintenance amount of Rs.10,000/- the wife filed the petition before the Family Court, Ramanathapuram.

3.That was resisted by the husband, stating that within a period of five months from the date of their marriage, the wife left the matrimonial



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home, stating that her father was sick. But, instead of going to her parental home, he went to her maternal senior mother's house. At that time, husband was working in Chennai. So he was not in position to visit the wife frequently. In the meantime, on 26.10.2015 first child was born. Later, she came to Chennai and lived along with the husband only for 28 days. Again she picked up quarrel and went to her parental home, after that she never returned. After 48 days, he was informed that she became pregnant. The husband promised to take care, if she comes to Gandhi Nagar. But, she did not. Again she came to the husband's house and lived for 28 days. Again she refused to come. He obtained loan for constructing the house and now repaying the loan amount. Even the enquiry conducted by the Department on the complaint given by the wife, they were advised to live together. But only, the wife refused. Without any proper reason, she is living separately.

4.At the conclusion of the enquiry process, the trial Court directed Rs.5,000/- as monthly maintenance to be paid by the husband to the children and wife. Apart from that he was also directed to pay Rs.10,000/- towards litigation expenses. Against the above said order, this revision has been preferred by the husband, challenging the quantum and as well as the liability to pay the maintenance to the wife, since the wife is living separately without any sufficient cause.



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5. During the pendency of the revision, the matter was referred to the Mediation Centre, but, there was no appearance by the respondent. So the legal aid counsel was appointed to defend the case on behalf of the respondents.

6. The learned counsel for the petitioner submitted that even though he is ready to live with the wife and children, the wife is not coming forward and no affidavit was also filed by the petitioner before the trial Court as directed by the Honourable Supreme Court in the case of ***Rajnish Vs. Neha and another*** reported in ***(2021) 2 SCC 324***. Apart from that it is also contended that he also filed a petition seeking restitution of conjugal rights in H.M.O.P.No.83 of 2021 and that was also allowed by the trial Court and in spite of the above said order, the wife has not come to the matrimonial home.

7. The marriage is admitted and birth of children is also admitted. But, allegations are made against each other. Wife says that the husband is not keeping good conduct, used to come to the house in drunken mood and used to cause assault upon her and because of that only the trouble has arisen between them. But, as stated above it is stated by husband that the



wife is vehemently refused to live with him without any reasonable and probable cause. Now, the separation is admitted. Children are also in the custody of the wife. As mentioned above, even the matter was referred to the Mediation Centre, the wife is not ready for any settlement. So the matter was referred back to the Court. Later, she did not appear.

8. With regard to the children, the revision petitioner cannot have any case. In fact that was also not disputed by him. Regarding the children, the maintenance amount of Rs.5,000/- cannot be found fault and is being confirmed.

9. So far as wife is concerned, as I mentioned earlier, because of the voluntary desertion only the petitioner is not able to continue the marital relationship. A decree is also against the wife for restitution of conjugal rights. When the revision petition was admitted, the petitioner was directed to deposit 50% of the arrear amount and also deposited. Even before the matrimonial Court, the wife appeared for one time only and later she did not appear. Hence, she was set exparte and the order was passed on 28.11.2022. So far as this petition is concerned, it appears that it has been filed only subsequent to the above said filing of petition for restitution of conjugal rights by the husband.



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10.In the present maintenance case, the revision petitioner has stated that after filing of the H.M.O.P.No.83 of 2021, after a gap of three months, the present petition was filed by the wife. Reading of the order of the trial Court and as well as the order passed by the matrimonial Court, it appears that there was no big issue between the husband and wife. Where to live is the only issue between them. Even though the revision petitioner has stated that on more than two occasions, the wife came to his place of work and lived only for short time and that thereafter, refused, the reason for her refusal for joint living could not be ascertained.

11.The second child was affected by autism. When cross examination was done, the wife has stated that she does not believe that her husband will take care of them, there is a disbelief or loss of confidence in the mind of the wife, it is for the revision petitioner to settle the issue by taking all steps. Merely taking legal steps may not be enough, at least in the interest of the children, the revision petitioner, who is working in Police Department, might have taken proper steps.

12.Since there is no big issue between them, I am of the



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considered view that the petitioner may take effective and proper steps for reunion, at least in the near future. Therefore, till reunion takes place, the revision petitioner is bound to pay the maintenance amount to the wife and children. On the sole ground, I am of the considered view that the revision petition is liable to be dismissed. Accordingly, this criminal revision petition is **dismissed**. Consequently, connected miscellaneous petition is closed.

08.02.2023

Index : Yes / No
Internet : Yes / No
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To

1. The Judge, Family Court, Ramanathapuram.



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G.ILANGOVAN,J.

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