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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05/01/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.RC(MD)Nos.1001 and 1050 of 2022

and

Cr1.MP(MD)No.12473 of 2022

(1)Cr.RC(MD)No.1001 of 2022:-

Selvakumar : Petitioner/Respondent

Vs.

Sharmila : Respondent/Petitioner

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order passed by the Additional Chief Judicial Magistrate, Madurai in MC No.10 of 2020, dated 12/09/2022 and set aside the same.

For Petitioner : Mr.D.S.Haroon Rasheed

For Respondent : Mr.C.Susi Kumar

(2)Cr1.RC(MD)No.1050 of 2022:-

Sharmila : Petitioner/Petitioner

Vs.

Selvakumar : Respondent/Petitioner

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order passed by the Additional Chief Judicial Magistrate, Madurai in MC No.10 of 2020, dated 12/09/2022 and set aside the same and enhance, the maintenance amount from Rs.8,000/- to Rs.20,000/-.



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For Petitioner : Mr.C.Susi Kumar
For Respondent : Mr.D.S.Haroon Rasheed

COMMON ORDER

Cr1.RC (MD) No.1001 of 2022 has been filed seeking to set aside the order passed by the trial court, whereas Cr1.RC (MD) No.1050 of 2022 has been filed seeking for enhancement.

2.The facts in brief:-

The marriage between the parties took place, on 26/06/2017 as per their customary rites. At the time of marriage, the husband stated to be working in Bahrain and earning Rs.2,00,000/- per month, a promise was also made by the husband to take the wife to Bahrain after the marriage. At that time, the wife was working in a private school. Because of the above said promise, she discontinued the job. But later, the husband started living in Madurai and joined in a private company. Later, the wife was taken to Coimbatore stating that he joined in a company for Rs. 1,00,000/- salary per month, but he was not properly attending the office. On 12/06/2018 a child was born and she was taken to her parental home. Later, the husband failed to take back child and herself to the matrimonial



home. So, the wife along with the child was staying in her parental home. Claiming maintenance amount of Rs.10,000/- each, petition was filed before the trial court.

3.That was resisted by the husband stating that right from the marriage, the wife was insisting upon separate house. Because of the compulsion only, he shifted to the residence to Coimbatore. At that time, the wife returned to the parental home stating that her mother is sick. Because of the attitude of the wife only, they were separated and in spite of repeated panchayat took place, she refused to return back to the matrimonial home. Later in February, 2019, the wife pressurizing the husband to rent a house near her parental home. That was also complied. On 08/10/2019, when they were riding in a two wheeler, there was an accident and for taking treatment, she went to her parental home and thereafter, she did not return. Notice was sent seeking restitution of conjugal rights. He also filed HMOP No.45 of 2020 before the Sub Court, Melur and it is also pending. He is not having sufficient income. The wife is also working as a teacher. Now, he is jobless.

4.Now challenging the order of maintenance, the husband filed Cr1.RC(MD)No.1050 of 2022, whereas seeking enhancement, the wife filed Cr1.RC(MD)No.1001 of 2022.



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5.Heard both sides.

6.Now let us go to the contention that was raised by the husband. He would submit that the wife voluntarily deserted the matrimonial home; One of the precondition for claiming maintenance is not established; the income was not properly proved; and he filed matrimonial proceedings for dissolving the marriage and only after getting notice, petition has been filed seeking maintenance.

7.It is the contention on the part of the wife that she insisted upon setting up a separate house, which was not considered by the husband and because of the above said matrimonial issue only, trouble has arisen between them.

8.With this argument and background as well as the documents, let us go the evidence on record.

9.Because of the marriage, the child was born, who is the second petitioner in CrI.RC(MD)No.1050 of 2023. Reading of the order passed by the trial court shows that both are related before the marriage and doubting the character of the wife, the husband is making trouble. He has also filed HMOP No.45 of 2020 seeking restitution of conjugal right. In the above said matrimonial proceedings,



both stated that are willing to live together.

10.The fact remains that both are willing to live together and what prevented them for reunion now has been stated by the wife to the effect that she insisted upon separate house. That cannot be construed to be unreasonable. The wife may not be willing to live in a joint family. That must be properly considered by the Family court. As has been held by the trial court, any finding with regard to the failure is made it may affect the pending proceedings. So as rightly pointed out by the trial court, we need not go to the above said issue. It is for the matrimonial court to record a finding.

11.With regard to the income, the husband has stated that since the wife refused to come along with him to Bahrain, he resigned the job and came to India. Later, they started living in Coimbatore. Thereafter, the wife returned to her mother's house for taking care of the mother. So he vacated and came down to Madurai. It was also admitted by him that after coming from Coimbatore, the wife is living with her mothers house, but visited her and gave money for expenses. It is also stated that he only admitted the wife in the hospital for delivery.



12.It is seen from the evidence of the husband that he is working in IT. He has stated that he is working in Temple City Technologies Private Limited. Finding that he is working in the IT and he is also earning sufficient income, the order of maintenance has been passed by the trial court by granting Rs.5,000/- as maintenance to the wife and Rs.3,000/- to the child. So, the above said order cannot be challenged on any ground. So also, the enhancement that has been sought for by the wife and the child cannot also be considered for the simple reason that now both are willing to live together, of course, without making any settlement for the simple issue, they are living separately ignoring the welfare of the child. So not only the conduct of the husband, but also the wife cannot be approved.

13.For all the reasons stated above, I find no merit in both the petitions filed by the parties. Accordingly, both criminal revisions are **dismissed**. Consequently, connected Miscellaneous Petition is closed.

05/01/2023

Index:Yes/No
Internet:Yes/No

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To,

The Additional Chief Judicial Magistrate,
Madurai.

G.ILANGOVAN, J

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Cr1.RC(MD)Nos.1001 and 1050 of 2022

05/01/2023



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