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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02/03/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.RC(MD)No.206 of 2023

and

Crl.MP(MD)No.2923 of 2023

G.K.Raju : Petitioner/Petitioner/
Respondent

Vs.

1.Amutha
2.Minor Tamizhvanan
3.Minor Praveen : Respondents/Respondents/
Petitioners

Prayer: Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code to call for the records and set aside the order, dated 10/03/2022 passed in Crl.M.P No.1070 of 2018 in MC No.8 of 2009 on the file of the Chief Judicial Magistrate, Thanjavur @ Kumbakonam.

For Petitioner : Mr.S.Sankar

For Respondents : Mr.G.Karuppasamy Pandian
for Mr.Micheal Heldon Kumar

**ORDER**

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This Criminal Revision has been filed seeking in order to set aside the order, dated 10/03/2022 passed in CrI.M.P No.1070 of 2018 in MC No.8 of 2009 on the file of the Chief Judicial Magistrate, Thanjavur @ Kumbakonam.

2.The facts in brief:-

Originally, the wife along with two minor children filed MC No.8 of 2019 seeking maintenance amount. After full trial, the trial Court namely the Chief Judicial Magistrate, Thanjavur @ Kumbakonam, ordered payment of Rs.4,500/- as monthly maintenance to the wife, Rs.2,500/- to the first child and Rs.3,000/- to the second child. Over which, there was no appeal by the petitioner. Later, the petitioner filed HMOP No.151 of 2012 seeking divorce on various grounds. That was allowed, dissolving the marriage between him and the wife, by order, dated 31/10/2018. Later, petition has been filed in CrI.M.P No. 1070 of 2018 under section 127 of the Criminal Procedure Code on the ground that in CC No.99 of 2013, he was convicted by the trial court; So dismissed from service, on 24/09/2013 by order of the DIG, Thanjavur; Later, he filed an appeal against the judgment in CC No.99 of 2013



before the Sessions Court, Thanjavur. It was transferred to the Additional District Judge, Fast Track Court, Kumbakonam. That was allowed and he was acquitted. In the meantime, the wife also filed C.A No.41 of 2014 seeking enhancement of sentence. That was also dismissed by the appellate court. Stating that the divorced wife is not entitled for maintenance during the above said period, he wanted the trial court to modify the order.

3.It was resisted by the respondents stating that subsequent to the appellate court judgment, he was reinstated into service, now he is working as Deputy Superintendent of Police. So no modification is required. Since there is no change of circumstance. Against the divorce granted by the matrimonial court, she has filed CMA before the Principal District Judge and now, it is still pending.

4.That petition was dismissed by the trial court. Against which, this revision has been preferred by the husband.

5.From the preamble portion, it is seen that several round of litigations including the matrimonial



proceedings, maintenance proceedings and criminal prosecution were undertaken by both parties. Now the criminal prosecution ended in favour of the petitioner, so also the matrimonial matters. Now appeal is stated to be filed before the Additional District Judge, Kumbakonam over granting of divorce. So far as the maintenance proceedings are concerned, no revision was preferred by the petitioner against the order that was passed originally. He waited for a very long time till the conclusion of the criminal proceedings as well as the matrimonial divorce proceedings. Later, only he filed modification petition. So far as the children are concerned, no modification was sought in the petition. Now the second respondent stated to have attained majority and now aged about 19 years. The third respondent stated to be a minor and under 17 years. Now whatever it may be, we need not go with regard to the maintenance, that was awarded to the children, since it has been stated in the ground of revision that he does not want to make any objection with regard to the maintenance of the children. Only with regard to the wife, he is contesting.



6.The learned counsel appearing for the petitioner has made submissions on various points. He would submit that the respondents 2 and 3 have attained majority. Since the decree of divorce has been granted, she is ceased to be the wife of him and till the date of decree only, she is entitled for maintenance. After that, she is not entitled to get maintenance under section 125 of the Criminal Procedure Code.

7.The learned counsel appearing for the respondents would submit that the decree of divorce has been challenged and now, appeal is also pending. Against the Maintenance Order, no appeal was preferred and filed the modification petition only in 2017. So according to him, the order that was passed by the trial court suffers no illegality.

8.To this, the learned counsel appearing for the petitioner would submit that desertion was also proved before the matrimonial court. The wife, who deserted the husband voluntarily, is not entitled for maintenance and for that purpose, he would rely upon the judgment of the Hon'ble Supreme Court reported in the case of **Rohtash**



it has been stated that the wife, who is deserting the husband is not entitled for maintenance under section 125 of the Criminal Procedure Code. But after the divorce is granted by the competent civil court, she is entitled for maintenance as a divorced wife, if shown that she is not able to maintain herself. There is no second opinion on that judgment of the Hon'ble Supreme Court. But here, during the course of section 125 Cr.P.C proceedings that was initiated by the wife, in 2009, there was no matrimonial proceedings. It was initiated by the husband only after much time. In 2020, divorce was granted on various grounds. The main ground is cruelty. The above said order was passed by taking into consideration of the criminal appeal, against the judgment of conviction, that was rendered against this petitioner. Now it has been stated that CMA also stated to be pending. So this has been taken into account by the trial court and refused to modify the order. So I find no merit to differ from the view that has been taken by the trial court.



9. Further absolutely, there is no evidence on record to show either before divorce or after divorce, the first respondent was and is capable of maintaining herself, having sufficient income. So no ground has been made by the petitioner to interfere in the order passed by the trial court.

10. In the result, this criminal revision is **dismissed**. Consequently, connected miscellaneous petition is closed.

02/03/2023

Index:Yes/No
Internet:Yes/No
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To,

The Chief Judicial Magistrate,
Thanjavur @ Kumbakunam.



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G. ILANGO VAN, J

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Cr1.RC(MD) No.206 of 2023

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