



Crl.R.C.(MD).No.1148 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 20.04.2023

Pronounced on : 23.06.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1148 of 2022

and

Crl.M.P.(MD)Nos.14402 and 14403 of 2022

Sankarram

... Petitioner/Appellant/
1st Respondent

Vs.

1. Kalaiselvi

2. Minor S.Nandhini Shri

3. Minor S.Harshini

(2 and 3 minor respondents represented
through their mother 1st respondent)

... Respondents/Respondents/
Petitioners

PRAYER: Criminal Revision Petition has been filed under Section 397 and 401 of Code of Criminal Procedure, to call for the records in judgment dated 22.08.2022 passed in Crl.A.No.42 of 2020 on the file of the Principal District and Sessions Judge, Virudhunagar partly modifying the



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order dated 18.02.2020 passed in D.V.C.No.10 of 2016 on the file of the learned Judicial Magistrate No.II, Sattur and set aside the same and allow this criminal revision petition and fix a reasonable quantum for each child and allow it to be divided between the parents.

For Petitioner : Mr.T.S.R.Venkataramana, Senior Counsel
for Mr.N.Shyllappa Kalyan

For Respondents : M/s.A.Banumathy

ORDER

This Criminal Revision is directed against the judgment passed in Crl.A.No.42 of 2020 dated 22.08.2022 on the file of the Principal District and Sessions Court, Virudhunagar District at Srivilliputtur, which was filed challenging the order passed in D.V.C.No.10 of 2016 dated 18.02.2020 on the file of the Court of the Judicial Magistrate No.2, Sattur.

For the sake of convenience and brevity, the parties herein will be referred as per their status / ranking in the trial Court.

2. It is not in dispute that the first respondent an M.C.A. graduate and the first petitioner, who studied M.S.(I.T) were working in Sri



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Moogambigai Infotecs, Sivagangai, that they have become friends in the working place and subsequently were loving each other, that their marriage was solemnized on 11.04.2008 at Chennai in the presence of the first respondent's parents and their relatives and got their marriage registered on the same day, that their marriage reception was held on 22.06.2008 at Pathrakaliamman Trust Marriage Hall, Thalavoipuram, Rajapalayam Taluk and that out of their wedlock, they had two daughters, namely, Nandhini Shri and Harshini, who were born on 09.03.2009 and 10.04.2014 respectively.

3. Admittedly, the petitioners 2 and 3 are the minor daughters of the first respondent and the first petitioner. The second petitioner is aged 14 years and studying 9th standard and the third petitioner is aged 9 years and studying 4th standard.

4. It is also not in dispute that the first respondent had earlier filed a divorce petition in H.M.O.P.No.2461 of 2009 before the Family Court, Chennai and the same was subsequently withdrawn, that the first respondent has again filed a divorce petition in H.M.O.P.No.601 of 2013



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before the Family Court, Chennai and that the first petitioner has then filed a petition in H.M.O.P.No.1440 of 2013 for restitution of conjugal rights and later in view of some compromise between the parties, both of the above petitions were withdrawn.

5. It is also not in dispute that the first respondent has again filed a petition in H.M.O.P.No.52 of 2016 on the file of the Subordinate Court, Srivilliputhur claiming divorce, that after trial, the Subordinate Court has passed the judgment dated 20.02.2020 dismissing the divorce petition, that the first respondent, aggrieved by the dismissal, had preferred an appeal in H.M.C.M.A.No.11 of 2020 on the file of the Principal District Court, Virudhunagar District at Srivilliputhur, that the learned Principal District Judge, after hearing both the parties, has passed the judgment dated 05.08.2021 dismissing the appeal and thereby confirming the judgment of the trial Court dated 20.02.2020 and that the first respondent, challenging the dismissal of the appeal, has preferred the second appeal in C.M.S.A. (MD)No.54 of 2021 on the file of this Court and this Court, vide judgment dated 09.03.2023, dismissed the same, confirming the judgment and decree passed in H.M.C.M.A.No.11 of 2020 dated 05.08.2021 on the file



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of the Principal District Court, Virudhunagar District at Srivilliputhur, confirming the judgment and decree passed in H.M.O.P.No.52 of 2016 dated 20.02.2020 on the file of the Additional Subordinate Court, Srivilliputhur, in dismissing the H.M.O.P. for divorce filed under Section 13(1)(i-a) of the Hindu Marriage Act.

6. The first petitioner for herself and for her minor daughters have laid a case under Sections 12 of Domestic Violence Act claiming the reliefs under Sections 18(a)(b)(c)(e), 19(f), 20(l), 20(1)(d) and 6(1), 21(1), 22 of Domestic Violence Act against the first respondent/husband and the respondents 2 and 3/mother-in-law and father-in-law. The respondents have filed a counter statement raising their objections. The learned Judicial Magistrate, after conducting enquiry, has granted maintenance at Rs.5,000/- each totally Rs.15,000/- to the petitioners by the first respondent from the date of petition and to pay the arrears of amount within 3 months, but rejected the other reliefs. Aggrieved by the granting of maintenance, the first respondent has preferred an appeal before the Principal District and Sessions Court. The learned Sessions Judge, taking note of the fact that the first petitioner is earning good income has passed



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the impugned judgment dated 22.08.2022 partially allowing the appeal and the order passed by the learned Judicial Magistrate was modified and directed the first respondent to pay a sum of Rs.7,500/- each to the petitioners 2 and 3. Aggrieved by the said judgment, the husband has come forward with the present criminal revision.

7. As rightly pointed out by the learned Senior Counsel appearing for the first respondent, the appellate Court has set aside the finding of the learned Magistrate that the first petitioner is entitled to get maintenance at Rs.5,000/- as she was earning good income, but enhanced the amount granted to the minor daughters and fixed at Rs.7,500/- per month.

8. The learned Senior Counsel appearing for the first respondent would submit that fixing the quantum of maintenance at Rs.7,500/- to a child is on the higher side and for a child a monthly expenses of Rs.3,000/- will be fair and equitable and that the appellate Court should judgment to the effect that fixing Rs.7,500/- for a child should be modified as Rs.3,000/- per child. He would further submit that even assuming, but not admitting that each child is entitled to a maintenance of Rs.3,000/- per



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child, then such a quantum should be divided between the father and mother as both are earning members and that total quantum of Rs.6,000/- should be apportioned between the father and mother equally at Rs.3,000/- each.

9. The learned Senior Counsel appearing for the first respondent would further contend that the appellate Court should have directed the first petitioner to hand over the first child to the first respondent and the first respondent is ready and willing to maintain, look after and educate the first child all by himself and that as a father the first respondent is bound to pay the maintenance, but at the same time, on the ground of equity and fair play, he is entitled to get the custody, love, affection and solace of his daughter.

10. The learned Senior Counsel appearing for the first respondent would further contend that the first respondent alone has preferred the appeal before the Principal District and Sessions Court challenging the finding that the first petitioner is also entitled to get maintenance amount at Rs.5,000/- as she was earning nearly Rs.1 lakh and also disputing the



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quantum of maintenance awarded, that the learned appellate Judge has correctly come to the decision that the first petitioner is not entitled to get any relief as she was earning good income, but enhanced the maintenance already awarded to the petitioners 2 and 3, in the absence of any appeal or revision filed by the petitioners seeking enhancement and that therefore, the appellate Court has committed a grave error in enhancing the maintenance amount already awarded at Rs.5,000/-.

11. It is pertinent to note that the first petitioner by alleging that her two minor daughters were studying in a respectable private school and she has been spending Rs.3 lakhs annually for the educational expenses of her minor daughters have claimed Rs.25,000/- per month, annually at Rs.3 lakhs and for food, dress, shelter and for medical expenses, the first respondent is liable to pay Rs.20,000/- per month for the first petitioner and Rs.10,000/- each to the minor daughters totally Rs.40,000/-.

12. As already pointed out, the learned trial Judge has granted maintenance amount at Rs.5,000/- each for the petitioners, but the appellate Judge by setting aside the order of granting maintenance to the



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first petitioner, has enhanced the quantum of maintenance awarded to the minor daughters from Rs.5,000/- to Rs.7,500/- each.

13. As rightly contended by the learned counsel appearing for the petitioners, considering the present scenario and the educational expenses, the contention of the first respondent that monthly maintenance of Rs.3,000/- will be fair and equitable for a child, cannot be accepted as it is practically not possible for anybody to educate a child in a private school with Rs.3,000/- as claimed by the first respondent.

14. It is also not in dispute that the petitioners 2 and 3 both of them have been under the care and custody of their mother/first petitioner and that the first petitioner was taking care of the need of her daughters and also bearing the educational expenses. Hence, the contention of the first respondent that the amount quoted by him at Rs.3,000/- should be divided between the father and mother as both are earning members and that therefore, the total quantum of Rs.6,000/- should be apportioned between the father and mother equally at Rs.3,000/- each is liable to be rejected.



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15. As already pointed out, the first respondent has taken a stand that he is ready and willing to maintain, look after and educate the first child all by himself, that the wife has no authority or power under law to keep away her children from the father and that if the first petitioner is unable to maintain her children, the first respondent is ready and willing to take back both the children and give them the best education and all comfort in life. Regarding the custody of the children, the first respondent has to approach the appropriate Court under the Hindu Minority and Guardianship Act and he cannot claim the custody of both the children in the present proceedings.

16. Now the only issue to be decided is as to whether the appellate Court has power and jurisdiction to enhance the maintenance awarded by the learned Judicial Magistrate, in the absence of any appeal or revision filed by the petitioners.

17. It is settled law that the proceedings initiated under Section 12 of the Domestic Violence Act are civil in nature. Order 41 Rule 33 empowers the appellate Court to do complete justice between the parties



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by passing such order or decree which ought to have been passed or made although not all the parties affected by the decree had appealed. The Hon'ble Supreme Court in ***Ghanshyam Das and other Vs. Dominion of India and others*** reported in ***AIR 1984 SC 1004*** has held that our laws of procedure are based on the principle that “as far as possible, no proceeding in a court of law should be allowed to be defeated on mere technicalities”.

18. It is pertinent to note that while interpreting any procedural law, the purpose of rendering justice should not be defeated on technical grounds.

19. The Hon'ble Apex Court in ***R.N.Jadi and Brothers and others Vs. Subhashchandra*** reported in ***2007 4 CTC 33*** has held that all the rules of procedure are the handmaid of justice, that the language employed by the draftsman of procedural law may be liberal and not stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice and that it cannot be disputed that law is only the means and justice is the end.



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20. As already pointed out, the appellate Court has enhanced the maintenance amount from Rs.5,000/- to Rs.7,500/-. Moreover, the appellate Court has awarded Rs.7,500/- each from the total amount of Rs.15,000/- awarded by the trial Court and the appellate Court has not exceeded the total amount granted by the trial Court.

21. Admittedly, there existed matrimonial dispute between the first petitioner and the first respondent and the present claim is with respect to the payment of maintenance to his minor daughters and as such, the first respondent cannot approach this issue with too technicality. Except the above, the first respondent has not canvassed any other reason or ground to impugn the said judgment. Hence, this Court concludes that the criminal revision is absolutely devoid of merits and the same is liable to be dismissed.

22. In the result, this Criminal Revision is dismissed. Consequently, connected Miscellaneous Petitions are closed.

23.06.2023

NCC : Yes/No
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K.MURALI SHANKAR, J.

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Pre-Delivery order made in
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Dated : 23.06.2023