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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02/03/2023

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.RC(MD)No.137 of 2023

and

Cr1.MP(MD)No.1957 of 2023

Murugeswaran @ Murugesan : Petitioner/Respondent

Vs.

1.Jamuna

2.Minor Venkatesh

(Respondent No.2 is
represented through his
mother and natural guardian
Mrs.Jamuna)

: Respondents/Petitioners

Prayer:- This Criminal Revision has been filed under section 307 r/w 401 of the Criminal Procedure Code, to call for the records from the Family Court, Srivilliputhur in MC No.21 of 2019, dated 01/07/2002 and set aside the same.

For Petitioner : Mr.M.Solaisamy

For Respondents : Mr.I.Velpradeep

**O R D E R**

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This criminal revision has been filed seeking to set aside the order of the Family Court, Srivilliputhur in MC No.21 of 2019, dated 01/07/2002.

2. The facts in brief:-

The marriage between the husband and the wife took place, on 07/06/2006 in Srivilliputhur Thirumalai Sannathi as per their customary and religious rites. At the time of marriage, the wife was provided with sufficient jewels, cash, sridhana, etc. A male child born, on 17/04/2007. Even though, the wife was performed the duties as a dutiful wife, the husband did not take proper care and maintain the family. He is also having some illicit intimacy with some girls and she was also forced her to give consent for divorce. On 15/05/2018, the wife along with her children were driven out of the house. The husband is doing real estate and agricultural wholesale business and thereby earning not less than Rs. 1,50,000/- per month.



3. Seeking maintenance amount of Rs.20,000/- for herself and Rs.30,000/- for the minor children, the wife filed a petition before the trial court.

4. That was resisted by the husband stating that only for 3 months, the wife lived with him. After that, by making petty quarrel, she left the matrimonial home. All the jewels and other articles are only in her hands and he is only an agriculturist, earning less than Rs.10,000/- to Rs.15,000/- per month. Apart from that, the wife is also employed in a private school and earning a sum of Rs.15,000/-; and his parents affected by paralysis and they are also taking care only by him.

5. At the conclusion of the enquiry, the trial court ordered payment of Rs.5,000/- as maintenance to the wife and Rs.15,000/- to the children.

6. Challenging the above said, this criminal revision has been preferred by the husband.

7. Heard both sides.



8.The learned counsel appearing for the petitioner would submit that there was separation between the husband and wife for more than 15 years and the divorce petition filed in 2005 also came to be dismissed and now the wife is also working as a teacher.

9.The learned counsel appearing for the respondents would submit that the 2nd respondent is undergoing 9th Standard; The divorce petition was filed only by the petitioner. It is further submitted that even in 2019 itself, the above said petition seeking divorce was filed. After filing of the above said petition only, petition seeking maintenance was filed and the wife working as a teacher, living in the house of the petitioner.

10.The marriage between the parties are not disputed. Now the only ground that has been made by the petitioner is that there was separation for more than 15 years between the himself and the wife and only the wife left the matrimonial home, deserting the family life. At whose fault, separation between the husband and wife occurred is a matter for consideration by the matrimonial Court.



11. Reading of the grounds that have been made in the divorce petition shows that trouble arose between the husband and the wife regarding the place of residence. Only because of the above said attitude of the wife, trouble has arisen. Originally, HMOP No.50 of 2011 was filed by the husband seeking divorce before the Sub Court, Sankarankovil. That was dismissed. No appeal was filed by him later. According to him, in the month of January 2015, an attempt was made by him to take the wife back to the matrimonial home. But the wife refused to come. So this is the second divorce petition. A counter has been filed by the wife, mentioning the very same facts. From the counter filed by her before the trial, it is also seen that after the dismissal of the earlier petition only, the wife filed the above said maintenance petition in the month of October 2019. So as mentioned earlier, those issues need not be gone into by this court at this stage. Ground of desertion can also be taken by the petitioner before the civil court. Absolutely, there is no finding by the competent court even in HMOP No.50 of 2011. so such ground is also not available to the petitioner at this stage.



12. Coming to the other aspect of income of the wife, absolutely, there is no material available on record, either in the form of oral evidence or in the form of documentary evidence. So the contention that the wife is employed cannot also be taken into account. In respect of source of income of the petitioner, no doubt there is no documentary evidence or proof. Whether they have filed any statement of assets and liabilities is also not clear on record. In fact, no document was produced on either side. But however, considering the fact that the petitioner is capable of earning and maintaining the family, the above said amount has been fixed by the trial court. Only Rs.5,000/- has been ordered to the wife and in so far as the second respondent is concerned, by taking into account the educational expenses and others, it is ordered Rs.15,000/-, which in my considered view, cannot be considered to be excessive.

13. So, I find no reason to interfere in the order of the trial court and accordingly, this criminal revision is liable to be dismissed.



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14. Accordingly, 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,

To,

The Family Court,
Srivilliputhur.



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G. ILANGO VAN, J

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02/03/2023



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