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Crl.R.C.No.313 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C.No.313 of 2018 and
Crl.M.P.No.3748 of 2018

S.Raji

... Petitioner

Versus

1.R.Sumathi

2.R.Bhuvaneshwari (Minor)

... Respondents

(Rep by her mother and natural Guardian)

Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C., to call for the records from the learned VI Additional Principal Judge, Family Court, Chennai in M.C.No.85 of 2010 and set aside the impugned order passed in the above M.C.No.85 of 2010 dated 06.10.2017.

For Petitioner : Mr. S.Sathyaraj

For Respondents : Mr.R.Y.George Williams

ORDER

This Criminal Revision Case has been filed to call for the records from the learned VI Additional Principal Judge, Family Court, Chennai in M.C.No.85 of 2010 and set aside the impugned order passed in the above M.C.No.85 of 2010, dated 06.10.2017.



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2. The learned Counsel for the Revision Petitioner submits that the Revision Petitioner is the Husband. As per the contention of the learned Counsel for the Revision Petitioner, the maintenance was ordered by the learned VI Additional Principal Judge, Family Court, Chennai in M.C. No.85 of 2010 considering the fact that the Petitioner is working as Khalasi in ICF. He is earning Rs.7,281/- per month in the year 2010, whereas the learned VI Additional Principal Judge, Family Court, Chennai had ordered Rs.8,000/- per month per month in the maintenance case. Aggrieved by the same, the Revision Petitioner had filed this Revision.

3. It is the contention of the Revision Petitioner that the Wife had not been living with the Revision Petitioner/Husband and had filed M.C.No.85 of 2010. The Revision Petitioner herein/Husband had filed H.M.O.P. No.1816 of 2008 before the Family Court, Chennai on the grounds of cruelty and desertion. The decree of divorce had been granted. The learned VI Additional Principal Judge, Family Court, Chennai on appreciation of evidence, had arrived at a conclusion that the wife had not filed any Petition for restitution of conjugal rights, granted divorce on the basis of cruelty and desertion.

4. The learned Counsel for the Respondents submitted that the



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Petitioner and the first Respondent married after a love affair. They eloped and married. Subsequently, the elders in both the families accepted the relationship and performed marriage with the blessings of the elders. Subsequent to the marriage, she had cohabited with the husband. When the wife was pregnant, she left for her mother's house. At that time, the husband left the matrimonial home and never saw the child, even after the delivery of the child was informed. In the year 2008, the husband filed H.M.O.P. Petition. Subsequently, he rejoined the wife. Therefore, the learned Family Court Judge dismissed the H.M.O.P for default.

5. Also, the Maintenance Case filed by the wife was also dismissed for default. Also, at the time of admission of this Criminal Revision Case, interim stay was granted on condition that the Revision Petitioner had to pay the amount as per the order of the Trial Court till the disposal of the Criminal Revision Case.

6. It is the further submission of the learned Counsel for the Respondents that after Corona lock down, the husband had not paid a single paise. Therefore, this Court may direct the Revision Petitioner/husband to deposit the entire arrears of amount, failing which further orders may be



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7. Also, the learned Counsel for the Respondents invited the attention of this Court to the evidence of the wife as R.W-1 in the H.M.O.P, wherein she had admitted that she is not wearing thali, metti, and not having kumkum on her forehead, which is a symbol of married Hindu woman. Those observations are not binding on the Maintenance Case. It is the voluntary conduct of the wife, whether to wear thali, metti, and not having kumkum on her forehead. That cannot be a deciding factor to deny maintenance to the wife.

8. It is the further submission of the learned Counsel for the Respondents that the learned Judge had noted that the wife was wearing yellow thread on her neck, which was lost sight of by the learned Judge by granting divorce.

9. It is his further submission that H.M.O.P filed by the husband on the ground of desertion was allowed to be dismissed for default by the husband when he was cohabiting with the wife subsequent to the filing of H.M.O.P. Therefore, he seeks to dismissal of this Criminal Revision Case filed by the husband as the wife was single and maintaining her child with difficulties. Now the child is studying X standard. Therefore, the Revision

Petitioner/husband may be directed to deposit the entire arrears of



maintenance, failing which this Criminal Revision Case may be dismissed, so that the wife will be able to move the Trial Court for further orders.

Point for consideration:

Whether the order of maintenance passed by the learned VI Additional Principal Judge, Family Court, Chennai in M.C.No.85 of 2010, dated 06.10.2017 is to be set aside as perverse?

10. Heard the learned Counsel for the Revision Petitioner and the learned Counsel for the Respondents. Perused the order passed by the learned VI Additional Principal Judge, Family Court, Chennai and the typed set furnished by both the parties.

11. The contention of the learned Counsel for the Respondent/Wife that M.C.No.85 of 2010 was dismissed and H.M.O.P filed by the Husband was also dismissed as both of them left it for dismissal, as the Husband rejoined the Wife and was co-habiting was found acceptable in the light of the orders passed by the learned VI Additional Principal Judge, Family Court, Chennai, dismissing the Maintenance case as well as the H.M.O.P filed by the Revision Petitioner/Husband. Subsequently the Husband had restored the H.M.O.P and obtained Decree of Divorce. The maintenance case was also



restored by the Wife and enquiry was conducted by the learned VI Additional Principal Judge Family Court, Chennai. In the enquiry, the Revision Petitioner/Husband had not filed his salary particulars was observed in the order by the learned VI Additional Principal Judge, Family Court, Chennai. The claim of the Husband as Respondent in M.C.No.85 of 2010 was that he was drawing only a meagre salary was not accepted by the learned VI Additional Principal Judge, Family Court, Chennai on the ground that he had not produced any proof of his income. It is the admitted fact that he is employed as a Khalasi in the Railways. Therefore, the learned VI Additional Principal Judge Family Court, Chennai had presumed that the salary would be minimum 25,000/- (Rupees Twenty five thousand only) per month.

12. The Wife having separated from the Husband and maintaining the minor daughter as a single Parent, the learned VI Additional Principal Judge, Family Court, Chennai had considered her plight and had accordingly ordered maintenance of Rs.8,000/- per month. The learned VI Additional Principal Judge, Family Court, Chennai also considered the fact that the M.C.No.85 of 2010 was filed in the year 2010 and it was ordered in 2017. At the time of filing the maintenance case, she had sought maintenance of Rs.7500/- (Rupees Seven thousand five hundred only) for her and the minor child. The learned VI



Additional Principal Judge, Family Court, Chennai had considered those facts and ordered Rs.8,000/- per month.

13. It is the contention of the learned Counsel for the Revision Petitioner/Husband that the Husband as a Khalasi was drawing a salary of Rs.7,281/- in 2010. Without any basis, the learned VI Additional Principal Judge, Family Court, Chennai had considered as the Respondent is working in Integral Coach Factory (ICF), the learned VI Additional Principal Judge Family Court, Chennai had in the paragraph 5 of the judgment has observed as follows.

“The Respondent is working in ICF which is a Government Department. Even in Railways, the lower grade employee is getting Rs.25000/- per month. Even according to the Respondent, his salary in the year 2010 was Rs.7281/- now he could get Rs.25000/- per month and therefore the Petitioners are entitled for maintenance from the respondent”.

The said observation of the learned VI Additional Principal Judge, Family Court, Chennai was raised as a ground in Revision to set aside the order of the learned VI Additional Principal Judge, Family Court, Chennai.

14. The submission of the learned Counsel for the Revision Petitioner cannot at all be accepted particularly considering the fact that he admits that he



is an employee of the Railways working in the post of Khalasi as a Group-D category employee, on the lower side what had been observed by the learned VI Additional Principal Judge, Family Court, Chennai cannot be set aside as a fertile imagination.

15. In the light of those facts, the order passed by the learned VI Additional Principal Judge, Family Court, Chennai is not considered as fertile imagination or unreasonable. The plight of the Wife and the minor daughter has to be considered by this Court. Section 125 of Cr.P.C., is a beneficial social legislation to prevent vagrancy among the section of the society who are left high and dry by those who are expected to be maintained either by the Husband or Father. Here the Husband had failed to maintain the Wife. Therefore, she was forced to file maintenance case before the learned VI Additional Principal Judge, Family Court, Chennai which was disposed.

16. When the Husband as Respondent in Maintenance case wantonly did not produce his salary certificate, the learned VI Additional Principal Judge, Family Court, Chennai is within his/her powers to arrive at a conclusion based on facts and circumstances of this case. When the Wife as Petitioner in M.C.No.85 of 2010 stated that her husband was drawing salary of Rs. 7,281/-, the learned VI Additional Principal Judge, Family Court, Chennai



had on consideration of the fact that in the years 2010, if the salary was Rs.7,281/-, in 2017, it would be around Rs.25,000/- and accordingly, ordered maintenance of Rs.8,000/- per month.

17. It is the submission of the learned Counsel for the Respondent/Wife in this Revision Case that the Petition filed by the Wife was dismissed as the Husband joined her. Therefore, she had not prosecuted it. Also, the Husband had filed H.M.O.P for Divorce. Subsequently, he left it for dismissal as he rejoined his Wife. Subsequently, it is found acceptable in the certified copies of those documents filed as a typed set before this Court where M.C.No.85 of 2010 was dismissed on 06.10.2017. As per the additional typed set filed by the learned Counsel for the Revision Petitioner in this case, H.M.O.P was allowed to be dismissed on 27.04.2022. Subsequently, it was restored. Therefore, the submission of the learned Counsel for the Respondent is accepted in the light of the certified copies of the adjudication papers that he had filed as typed set. The amount of Rs.8,000/- per month awarded as maintenance by the learned VI Additional Principal Judge, Family Court, Chennai, is not at all considered as unreasonable award. It is reasonable award which does not warrant any interference by this Court.

<https://www.mhc.tn.gov.in/judis> 18. In the light of the above discussion, the point for consideration is



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answered against the Revision Petitioner and in favour of the Respondents.

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The order of maintenance passed by the learned VI Additional Principal Judge, Family Court, Chennai in M.C.No.85 of 2010, dated 06.10.2017 is found proper and the same is to be confirmed.

In the result, **the Criminal Revision Petition is dismissed.** The order passed by the learned VI Additional Principal Judge, Family Court, Chennai, in M.C.No.85 of 2010 is confirmed. Consequently connected miscellaneous petition is closed.

13.06.2024

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Internet : Yes/No

Index : Yes/No

Speaking/Non-speaking order

To

1. The VI Additional Principal Judge,
Family Court, Chennai.

2. The Section Officer,
Vernacular Records.

<https://www.mhc.tn.gov.in/judis>



High Court of Madras,
Chennai.



CrI.R.C.No.313 of 2018



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SATHI KUMAR SUKUMARA KURUP, J.,

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