



Crl.RC.No715 of 2023.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.04.2024

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

Crl.RC.No.715 of 2023

1. Anitha

2. Minor Karthika

... Petitioners

Vs.

S.Rameshkumar

... Respondent

Petition filed under Section 397 r/w 401 of Code of Criminal Procedure to call for the records pertaining to the order passed by the learned Judicial Magistrate No.I, Bavani, Erode District in M.C.No.6 of 2017 dated 05.01.2023 and set aside the same in so far as dismissing the same against the 1st petitioner is concerned by allowing the revision petition.

For Petitioners : Mr.K.Govi Ganesan

For Respondent : No appearance

ORDER

This Criminal Revision case is filed against the order passed by the learned Judicial Magistrate No.I, Bavani, Erode District in M.C.No.6 of 2017 dated 05.01.2023 and set aside the same in so far as dismissing the



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same against the 1st petitioner is concerned by allowing the revision petition.

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2. The case of the petitioners is that, the first petitioner/wife and the respondent/husband marriage was solemnized on 12.06.2011 as per the Hindu Rights and Customs at Dhanalakshmi Marriage Hall, Anthiyur. The second petitioner was born from and out of the wedlock between the first petitioner and the respondent. Due to some matrimonial dispute, the respondent filed a petition seeking restitution of conjugal rights in H.M.O.P.No.95 of 2016, however, the same was decreed vide order dated 18.03.2020. In the meanwhile, the first petitioner filed maintenance case in M.C.No.06 of 2017 on the file of learned Judicial Magistrate No.1, Erode, claiming a sum of Rs.5,000/- per month to each petitioners and a sum of Rs.10,000/- for the cost of adjudicating the maintenance case. After contest, the Trial Court has dismissed the same and awarded a sum of Rs.8,000/- per month in favour of the second petitioner/child alone towards her maintenance which has to be paid on or before the 10th day of every month of English calendar month till the marriage of the second petitioner. The respondent was also directed to pay a sum of Rs.30,000/- towards the



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educational expenses of the second petitioner on or before the 10th day of April month of every English calendar year. Aggrieved by the same, the petitioners have filed the present Criminal Revision Case.

3. The learned counsel for the petitioners submit that though the petition filed by the respondent seeking restitution of conjugal rights in H.M.O.P.No.95 of 2016 was decreed in his favour vide order dated 18.03.2020, however, the appeal filed by the first petitioner as against the said order in C.M.A.No.03 of 2021 before the III Additional District Court, Gobichettipalayam, Erode was allowed vide order dated 08.02.2023. However, without considering the same, the Trial court granted maintenance only to the second petitioner and rejected the claim of the first petitioner on sole ground that the first petitioner was not willing to rejoin with the respondent which is wholly unsustainable. Hence, he prayed for pass appropriate orders.

4. Though the notice was served on the respondent, no one appeared



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on his behalf. Considering the period of pendency of the revision petition, the same is disposed of based on the materials available on record.

5. This Court gave its anxious consideration on the arguments advanced by the learned counsel for the petitioners and perused the materials available on record.

6. Admittedly, the claim of the first petitioner seeking maintenance was rejected by the trial court citing the order passed in H.M.O.P.No.95 of 2016 on the ground that the first petitioner is not ready to rejoin her husband. However, it is the claim of the first petitioner that though the petition seeking restitution of conjugal rights filed by her husband was decreed in his favour, however, the appeal filed by the first petitioner in C.M.A.No.3 of 2021 was allowed vide order dated 08.02.2023. Though such a contention has been raised by the learned counsel for the petitioners, however, upon perusal of the order passed by the lower appellate Court, it is pertinent to note that the same is bereft of any details and has simply set aside the order dated 18.03.2020 passed in H.M.O.P.No.95 of 2016.



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7. In view of the aforesaid, this Court is of the view that the trial court has rightly appreciated the order dated 18.03.2020 in H.M.O.P.No.95 of 2016 and passed the award in favour of the respondent. However, the same was not honoured by the first petitioner which directly attract the provisions u/s.125(4) of Cr.P.C. The relevant portion of the said provision is extracted hereunder:

“125. Order for maintenance of wives, children and parents.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent.”

8. It is discernible from the records that the first petitioner without any reason refused to live with her husband. In such a backdrop the order passed by the trial court in M.C.No.06 of 2017 in rejecting the grant of maintenance to the first petitioner does not warrant any interference. Hence, this Court is not inclined to interfere with the order of the trial court with



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regard to the rejection of maintenance to the first petitioner.

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9. Insofar as the maintenance amount awarded to the second petitioner is concerned, since, the second petitioner is a school going student who is aged about 12 years, the maintenance amount awarded by the trial court would be very meagre to meet out her day to day expenses, hence, this Court is inclined to modify the maintenance amount passed by the trial court in M.C.No.6 of 2017 in favour of the second petitioner in the following terms:

(i) The respondent is directed to pay the entire arrears amount at the rate of Rs.10,000/- per month to the second petitioner within a period of six (6) months from the date of receipt of a copy of this order.

(ii) The respondent shall continue to pay the enhanced maintenance amount of Rs.10,000/- to the second petitioner on or before 7th of every English calendar month till the marriage of the second petitioner.

(iii) The respondent shall also pay a sum of Rs.30,000/- towards the educational expenses of the



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second petitioner as awarded by the trial court on or before 10th of every English calendar year.

10. With the above observation and directions, this Criminal Revision Petition is partly allowed.

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Index	: Yes/No
Speaking order	: Yes/No
NCC	: Yes/No



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M.DHANDAPANI, J.

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To

The learned Judicial Magistrate No.I,
Bavani, Erode District.

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