



Crl.R.C.No.365 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C.No.365 of 2021

and

Crl.M.P.No.6131 of 2021

V.Balakrishnan @ D.V.Jeyakrishna

... Petitioner

Versus

B.Revathi

... Respondent

Criminal Revision Case filed under Sections 397 r/w 401 of Criminal Procedure Code, 1973, to call for the records in M.C.No.21 of 2016 on the file of the learned Judicial Magistrate at Ambattur and allow the Revision and set aside the order in M.C.No.21 of 2016, dated 15.04.2021 on the file of the learned Judicial Magistrate at Ambattur.

For Petitioner

: Mr.R.Ganesh Kumar

For Respondent

: Mr.M.P.Saravanan

ORDER

The Criminal Revision Case is filed to set aside the order passed by the learned Judicial Magistrate, Ambattur, in M.C.No.21 of 2016, dated 15.04.2021.

2. The learned Counsel for the Revision Petitioner submitted that the Criminal Revision Case had been filed by the husband, who is the Respondent in the Maintenance Case in M.C.No.21 of 2016, on the file of the learned



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Judicial Magistrate, Ambattur.

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3. The Revision Petitioner and the Respondent, after love affair, got married on 11.09.2014, as per Hindu Rights and Customs at Arulmigu Thiruvalleeswarar Temple, Padi, Chennai. The Revision Petitioner/husband belonged to the Scheduled Caste Community and the Respondent belonged to the Vanniyar Community. Thereafter, the Respondent resided in the joint family of the Petitioner.

4. It is the contention of the learned Counsel for the Revision Petitioner that the Petitioner is living with his aged mother, widowed sister, and another sister, who was deserted by her husband, along with her children as a joint family. The Respondent/wife did not want to live in a joint family set-up. She demanded the Revision Petitioner/husband to set-up independent home for her. Due to family circumstances, the Revision Petitioner has to support his two sisters and their children, which made the Respondent/wife to pick up the quarrel and leave the matrimonial home on her own. Therefore, the Revision Petitioner was forced to file H.M.O.P.No.198 of 2015 on the file of the learned Sub Judge, Ponneri, seeking divorce on the ground that the Respondent/wife used to pick up quarrel with the husband.



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5. In the course of the matrimonial life, the Respondent delivered a male child. The child was born on 12.06.2015. After the delivery of the child, the attitude of the Respondent towards the Revision Petitioner and his parents and sisters changed. She did not return to the matrimonial home. After notice was served on the Respondent/wife in H.M.O.P.No.198 of 2015 on the file of the learned Sub Judge, Ponneri, the Respondent/wife filed M.C.No.21 of 2016, seeking maintenance as a counterblast. She is qualified. She is employed in the private sector. Only to cause harassment to the Revision Petitioner, she had filed Maintenance Case. The Revision Petitioner as Respondent in M.C.No.21 of 2016, on the file of the learned Judicial Magistrate, Ambattur, had filed counter disputing the contention of the Maintenance Petition.

6. The Respondent/wife had completed Apprenticeship at the Integral Coach Factory (ICF) and obtained a certificate with an aggregate mark of 75.9%. Based on which, she is employed in the private sector. The child born to the Revision Petitioner and the Respondent is now admitted in Kendriya Vidyalaya and the Revision Petitioner, who is employed as a Junior Engineer in the Railways, had been paying the regular fees and other expenses of his only child, B.Suryaprakash, in the amount ordered by the learned



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Judicial Magistrate, Ambattur, in M.C.No.21 of 2016. Only after filing of the H.M.O.P, the Respondent had claimed that in-laws of the Revision Petitioner ill-treated her for dowry.

7. The learned Counsel for the Revision Petitioner invited the attention of this Court to the evidence of the Respondent as P.W-1, particularly in cross-examination and the discussion of the evidence by the learned Judicial Magistrate, Ambattur, regarding the financial capacity of the husband to pay the maintenance to the wife and child in paras 14 to 16.

8. It is the contention of the learned Counsel for the Revision Petitioner/husband that he continued to pay for the expenses of the only child. The Respondent/wife who had filed Maintenance Case wantonly delayed the trial in H.M.O.P. She had not filed any counter stating that she will rejoin the matrimonial home. The H.M.O.P was decreed after the contest.

9. The learned Counsel for the Respondent by way of reply, submitted that the order of the learned Judicial Magistrate, Ambattur, is a well-reasoned order. Taking into consideration the salary and status of the Petitioner in the counter filed by the Revision Petitioner as Respondent in the



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Maintenance Case, he claimed that the wife is employed in a private Company and that he had furnished the bogus document.

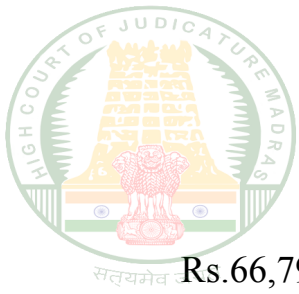
10. The learned Counsel for the Respondent submitted that it was a love marriage where both the families resisted the love affair. Still, they were married. After marriage, the family of the husband, the Revision Petitioner herein, consisting of his mother and two sisters, treated the wife, the Petitioner in Maintenance Case and the Respondent in the Criminal Revision Case with cruelty, ignoring the fact that she is pregnant. They had demanded that she work from morning till night as a maid servant, not providing proper food and nutrients. They harassed on the ground that if the Revision Petitioner herein, as Respondent in Maintenance Case, had married the girl of their caste, they could have provided dowry according to his status and education. Since it was a love marriage, he was denied those material comforts. The wife as Petitioner in the Maintenance Case, had clearly stated it in her evidence as examination-in-chief. Therefore, she was forced to move out of the matrimonial home. After delivery of the child, the intention of the husband/Revision Petitioner and their family members changed, forcing the Respondent in this case, the Petitioner in the Maintenance Case, to move Maintenance Case before the learned Judicial Magistrate, Ambattur, seeking maintenance.



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11. The contention of the husband as Respondent in Maintenance Case was rejected by the learned Judicial Magistrate, Ambattur, on appreciation of the evidence. If this contention of the Revision Petitioner that he will continue to pay for his child, but as a divorced wife who had been divorced on the ground that she left the matrimonial home on her own and refused to join the matrimonial home, she is not entitled to maintenance. If this argument of the Revision Petitioner is accepted, after allowing the Criminal Revision Case, the Revision Petitioner may even stop paying fees for his only child. Therefore, the order of the learned Judicial Magistrate, Ambattur, is to be confirmed, and this Criminal Revision Case is to be dismissed as having no merit.

12. The Revision Petitioner is employed as Junior Engineer in the Railways. As per the ruling of the Hon'ble Supreme Court in **(2021) 2 SCC 324 [Rajnish vs. Neha]**, assets and liability have to be furnished, but he has not done so. Till date, the wife is not employed, and she is from a poor family. She is living with her aged widowed mother. What had been ordered as maintenance is a reasonable amount, taking into consideration the status of the husband as a Junior Engineer in the Railways and drawing salary of



Rs.66,793/- after deduction of Rs.32,920/-. Therefore, the order of the learned Judicial Magistrate, Ambattur, granting Rs.12,000/- to the wife and Rs.8,000/- to the child is a reasonable amount and does not warrant any interference by this Court.

Point for consideration:

Whether the order passed by the learned Judicial Magistrate, Ambattur, in M.C.No.21 of 2016 dated 15.04.2021 is to be set aside as perverse?

13. Heard the learned Counsel for the Revision Petitioner and the learned Counsel for the Respondent.

14. On perusal of the order passed by the learned Judicial Magistrate, Ambattur, and the evidence of the Revision Petitioner and the Respondent, it is found that in the earlier instances, during the pendency of the Maintenance Case, interim order was passed whereby Rs.7,000/- was granted to the wife and Rs.3,000/- to the child. After recording evidence, in the light of the materials available before the Court, the learned Judicial Magistrate, Ambattur, had granted Rs.12,000/- to the wife and Rs.8,000/- to the child. Also, Rs.5,000/- towards litigation expenses. The submission of the learned Counsel for the Revision Petitioner that the Revision Petitioner continued to pay for the school fees of the child and that he had admitted the child in the Kendriya Vidyalaya



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is appreciated. The submission of the learned Counsel for the Revision Petitioner that he cannot pay the wife who had deserted him as she did not return to the matrimonial home after delivery of the child, he had filed Petition for visitation in the H.M.O.P. to visit his child and accordingly obtained order. After filing of the Maintenance Case, he had admitted his child in the Kendriya Vidyalaya, which was admitted in the cross-examination of the wife, which cannot be considered in favour of the Revision Petitioner/husband on the ground that he had obtained divorce. After getting a decree of divorce in his favour, he is likely to get married, in which case he has burden to take care of his wife and the children. In which circumstances, he cannot be expected to contribute the regular payment that he has made till date during the pendency of this Criminal Revision Case.

15. As rightly pointed out by the learned Counsel for the Respondent/wife, there is every possibility of the Revision Petitioner committing default in payment of fees for the child. The only intention of the learned Counsel for the Revision Petitioner is to get the order of the learned Judicial Magistrate, Ambattur, negated in the Revision Petition on the ground that he had obtained divorce against his wife for leaving the matrimonial home on her own.



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16. Considering the fact that the Revision Petitioner is residing with his mother and sisters. The contention of the wife in the Maintenance Case that she was harassed and tortured by the mother-in-law and sisters-in-law cannot be ignored. The contention of the wife in the Maintenance Case is that since it was a love marriage, the Respondent in Maintenance Case, who is a qualified Junior Engineer in the Railways, had all opportunities of getting dowry if he had married a woman from his community, and if it was an arranged marriage. On that pretext, the wife was made to work as a maid. In the cross-examination, she had stated that working in the family as a woman, a wife, or a daughter-in-law is normal. The reason for her leaving the matrimonial home and not returning the matrimonial home is the suffering she experienced during the course of matrimonial life at the hands of her in-laws, which cannot be ignored or rejected lightly. The Respondent having regular income, cannot refuse maintenance on the ground she left the matrimonial home.

17. It is relevant to rely on the reported decision of the Hon'ble Supreme Court regarding entitlement of separate residence to the wife in the case of *Rajathi vs. C.Ganesan [AIR 1999 SC 2374]* wherein it has been observed as under:



“8. We may also have a look at the provisions of the Hindu Adoptions and Maintenance Act, 1956, which provides for maintenance to a Hindu wife. Under Section 18 of this Act a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime. Under sub-section (2) she will be entitled to live separately from her husband without forfeiting her claim to maintenance,—

“(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.”

Under sub-section (3) a Hindu wife is not entitled to a separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion. It will be apposite to keep these provisions in view while considering the petition under Section 125 of the Code.”

18. The submission of the learned Counsel for the Revision Petitioner that the Petitioner has to support his mother, two sisters, and their children is found justified. He has resources to maintain them, as he is drawing salary of Rs.66,793/-. Out of which, after deduction, deduction means that he is paying for his home loan. Also, he has pay increase every year. Therefore, what had been ordered by the learned Judicial Magistrate, Ambattur, in M.C.No.21 of 2016 is a reasonable amount. He can deduct the amount from the amount



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ordered for the child. The amount of Rs.8,000/- is justified for the child.

19. The contention of the learned Counsel for the Revision Petitioner that the Petitioner undertakes to pay regularly Rs.4,000/- to the child towards his fees as well as his nutrition, dress, and other expenses voluntarily cannot be accepted as objected by the learned Counsel for the Respondent/wife, because there are chances of circumstances changing after the Revision Petitioner contracts a second marriage. Therefore, what had been ordered by the learned Judicial Magistrate, Ambattur, can be invoked only by the wife, the Respondent in this case, based on the order in her favour. If that is altered, it amounts to denial of maintenance to the wife. The attitude of the Petitioner in filing a Petition for divorce without filing a Petition for restitution of conjugal rights exposes the mind of the Petitioner and proves the contention of the wife in the Maintenance Case. The Court can draw presumptions from materials available before it.

20. It is the contention of the learned Counsel for the Revision Petitioner that the Respondent/wife is employed in the private sector. He was unable to provide any documents or examine any witnesses regarding his claim of the employment of the wife. Therefore, the contention of the learned



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Counsel for the Revision Petitioner that the wife is capable of earning. She is earning from private Company is rejected in the absence of any materials. If the Petitioner has any documents, he can always approach this Court for modification of the order regarding the payment that he has made towards the maintenance of his wife. As far as the child is concerned, the order passed by the learned Judicial Magistrate, Ambattur, in favour of the child holds good till date. In future, when the necessity of the child increases, on behalf of the child, the Respondent/wife in this case can always approach this Court for altering or seeking modification of the order. For the present, the order passed by the learned Judicial Magistrate, Ambattur, cannot be found to be erroneous. It is based on calculation of the salary and the needs of the minor child and the wife. The claim of the Petitioner that the Petitioner and the Respondent were married are from different communities is accepted, but they had to exercise tolerance towards each other. After marriage, the Petitioner who is employed as Junior Engineer had decided to divorce her, which shows his attitude toward discarding the wife. Therefore, the filing of Maintenance Case by the wife approaching the learned Judicial Magistrate, Ambattur, for the same is found justified. The payment of fees has to be made by the wife after the maintenance is ordered in favour of the child. As per the claim of the wife before the learned Judicial Magistrate, Ambattur, Rs.12,000/- for the wife and Rs.8,000/- for the



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child is found justified in the light of the salary of the husband as Junior Engineer in the Railways. There is every possibility of pay rise for the husband and he can manage the affairs of the joint family consisting of his mother and sisters.

21. In the light of the above discussion, the point for consideration is answered in favour of the Respondent and against the Revision Petitioner. The order passed by the learned Judicial Magistrate, Ambattur, in M.C.No.21 of 2016, dated 15.04.2021 is found proper and the same is to be confirmed.

In the result, this **Criminal Revision Case stands dismissed** as devoid of merits. The order passed by the learned Judicial Magistrate, Ambattur, in M.C.No.21 of 2016, dated 15.04.2021 is confirmed. Consequently, connected Criminal Miscellaneous Petition is closed.

08.03.2024

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Internet : Yes/No

Index : Yes/No

Speaking/Non-speaking order

SATHI KUMAR SUKUMARA KURUP, J.,



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Order in
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