



Crl.R.C.No.2014 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2024

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

Crl.R.C.No.2014 of 2023
and
Crl.M.P.No.18613 of 2023

Sathish Babu

...Petitioner

Vs.

1. Sridevi
2. Gokulraj
3. Minor Dharanya
(Minor Rep. By the 1st respondent mother)

...Respondents

Criminal Revision case filed under Section 397 r/w 401 of Code of Criminal Procedure to set aside the order dated 22.06.2023 passed in F.C.M.C.No.28 of 2021 on the file of the Learned Judge Family Court, Vellore.

For Petitioner : Mr.Suchit Anant Palande

For Respondents : Mr.B.Shivakumar

ORDER

This Criminal Revision case has been filed seeking quashment of the order dated 22.06.2023 passed in F.C.M.C.No.28 of 2021 on the file of the Learned Judge Family Court, Vellore. The learned Judge has ordered monthly maintenance of Rs.5,500/- in favour of the 1st respondent/wife,



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Rs.6,000/- in favour of the 2nd respondent/son and Rs.5,000/- in favour of the 3rd respondent/daughter.

2. The case of the petitioner is that, the marriage between the petitioner/husband and the 1st respondent/wife was solemnised on 05.11.2003 as per the Hindu rites and customs and out of the wedlock, they were blessed with one male child/the 2nd respondent and one female child/the 3rd respondent herein. While so, due to some matrimonial dispute, the 1st respondent left the matrimonial house. While so, the respondents herein filed a maintenance case under Section 125 of Cr.P.C. in F.C.M.C.No.28 of 2021 on the file of the Family Court, Vellore, claiming a monthly maintenance of Rs.15,000/- in favour of the 1st respondent, Rs.10,000/- in favour of the 2nd respondent and Rs.5,000/- in favour of the 3rd respondent. After adjudication, the trial court, vide impugned order dated 22.06.2023 ordered for a monthly maintenance of Rs.5,500/- in favour of the 1st respondent/wife, Rs.6,000/- in favour of the 2nd respondent/son and Rs.5,000/- in favour of the 3rd respondent/daughter. Aggrieved by the same, the petitioner/husband has preferred this revision.

3. Learned counsel for the petitioner submitted that, it is the 1st respondent who deserted the petitioner and she left the matrimonial house on



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her own volition and had taken the children forcibly along with her. Further, though the 1st respondent filed HMOP.No.13 of 2011 on the file of the Principal Senior Civil Judge, Chitoor under Section 9 of the Hindu Marriage Act 1955 for Restitution of Conjugal rights, however, she never contested the case and the same was dismissed for default on 10.06.2012. Further, the 1st respondent had continuously harrassed the petitioner by way of filing false complaint, due to which he quit his high paying job and notwithstanding the same, the petitioner filed a divorce petition in MC.No.3844 of 2013 and the same was allowed vide decree dated 13.01.2016 on the ground of cruelty and that the 1st respondent desserted the petitioner wihtout any sufficient reason. In such circumstances, after a lapse of about 6 years, the respondents filed a maintenance case in the year 2021 only to drag on the issue and to further harrass the petitioner and without considering the said fact, the trial court had allowed the maintenance case filed by the respondents and further directed the petitioner to pay a total sum of Rs.16,500/- in favour of the respondents towards monthly maintenance, which is wholly unsustainable, since the petitioner is unemployed and he himself is relying upon his age old mother for his day to day need. He further submitted that, the petitioner is mainly aggrieved with ordering maintenance in favour of the 1st respondent, since it is the 1st respondent who desserted the petitioner and the divorce petition filed



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by the petitioner was allowed mainly on the ground that the petitioner was subjected to harassment at the hands of the 1st respondent and the 1st respondent refused to live with the petitioner without any sufficient reason. When such a specific observation was made by the lower court, which attracts section 125(4) of Cr.P.C., as per which *No wife shall be entitled to receive an allowance from her husband under this section 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* and that, when such an observation was not challenged by the 1st respondent in the manner known to law, it is very clear that, the 1st respondent is not entitled for any maintenance at the hands of the petitioner. While so, without taking into consideration the said facts, the trial court had awarded maintenance in favour of the 1st respondent, which has to necessarily be interfered with. Accordingly, he prayed for appropriate orders.

4. Though very many grounds have been raised, the learned counsel for the respondents submitted that, this Court, without going into the merits of the case and without interfering with the impugned order may grant liberty to the 1st respondent to challenge the order dated 13.01.2016 made in MC.No.3844 of 2013 in the manner known to law and if she succeeds in the same, further liberty may be granted to her to file fresh petition seeking



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maintenance. In the mean time, the petitioner shall continue to pay maintenance as awarded by the trial court in favour of the 2nd and 3rd respondents, without any default.

5. Heard learned counsel on either side and perused the material documents placed on record.

6. Admittedly, the trial court while allowing the divorce petition filed by the petitioner/husband made a specific observation in the order dated 13.01.2016 made in MC.No.3844 of 2013 that *Further, the evidence given by the petitioner would show that the respondent/wife deserted him since 2010. Though respondent appeared in this case, has not contested the matter by filing objection. In the absence of denial and rebuttal evidence the evidence adduced by the petitioner has to be accepted. The evidence given by the petitioner would show that he was subjected to harassment at the hands of the respondent since day one of the marriage. His further evidence establishes that the respondent deserted him since 2010. The present petition was filed in 2013. The respondent had deserted the petitioner for more than two years prior to presentation of the petition. The desertion on the part of the respondent also amounts to cruelty.*



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7. The above said observation which shows the act of the 1st respondent/wife which attracts Section 125(4) of Cr.P.C., and thereby the 1st respondent/wife is not eligible to receive any maintenance from the petitioner /husband. While so, without considering the said facts, the trial court ordered for a monthly maintenance of Rs.5,500/- in favour of the 1st respondent payable by the petitioner, which is unsustainable and the same warrants interference of this Court.

8. Hence, this Court holds that the 1st respondent is not entitled to receive any maintenance from the petitioner, unless the above said observation made by the trial court as against the 1st respondent in the order dated 13.01.2016 passed in MC.No.3844 of 2013 was challenged in the manner known to law and the same is set aside. Accordingly, the order of maintenance insofar as the wife is concerned, as ordered by the trial court is set aside, however, the order of maintenance ordered to the children by the trial court is confirmed.

9. For the reasons aforesaid, this Court is inclined to modify the monthly maintenance awarded by the trial court in the following terms :-



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(i) The petitioner is directed to pay a sum of Rs.6,000/- as monthly maintenance in favour of the 2nd respondent and Rs.5,000/- as monthly maintenance in favour of the 3rd respondent as awarded by the trial court from the date of maintenance petition and shall continue to pay the said amount on or before the 5th day of every English Calendar month;

(ii) the petitioner is directed to pay the arrears of maintenance amount, if any, less than the amount if any already paid, to the 2nd and 3rd respondents within a period of four weeks from the date of receipt of a copy of this order.

(iii) Further, the 1st respondent is at liberty to file a fresh petition seeking maintenance, if the above said observation made against her in the order dated 13.01.2016 passed in MC.No.3844 of 2013 is set aside in the manner known to law.

10. With the above direction and modification, this Criminal Revision Case stands allowed. Consequently, the connected miscellaneous petition is closed.

15.04.2024

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Index : Yes/No
Neutral citation : Yes/No
Speaking order : Yes/No

To

The Family Judge,
Family Court, Vellore.



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M.DHANDAPANI, J.

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