



CrI.RC.No.1043 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM:

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

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1. P.Kokilavani
2. Minor G.T.Karthick Eniya
3. Minor G.T.Riyasini

Minor petitioners rep. by their
Next friend/guardian 1st petitioner Mother Kokilavani ...Petitioners

Vs.

G.Tamil Enian

...Respondent

Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 21.07.2023 made in MC.No.30 of 2022 on the file of the Family Court, Dharmapuri.

For Petitioners : Mrs.R.Kamalarani

For Respondent : Mr.R.Aranganathan

ORDER

This Criminal Revision Case has been filed seeking quashment of the order passed in MC.No.30 of 2022 dated 21.07.2023 on the file of the Family Court, Dharmapuri.



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2. The case of the petitioners is that, the marriage between the 1st petitioner/wife and the respondent/husband was solemnised on 06.02.2019 and out of their wedlock, the 2nd and 3rd petitioners were born. However, due to some matrimonial dispute, they got separated. In such circumstances, alleging that the respondent refused to maintain the petitioners, the petitioners filed a maintenance case under Section 125 of Cr.P.C. in MC.No.30 of 2022 claiming a monthly maintenance of Rs.30,000/- and a sum of Rs.2,00,000/- per annum towards medical, educational and other expenses. The trial court, after adjudication, vide order dated 21.07.2023 allowed the said petition in part and directed the respondent/husband to pay a monthly maintenance of Rs.4,000/- each to the 2nd and 3rd petitioners and ordered for an annual payment of Rs.15,000/- each to the 2nd and 3rd petitioners, towards their educational and other expenses, however, no maintenance was ordered in favour of the 1st petitioner/wife. Aggrieved by the same, the petitioners have come up with this revision.



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3. Learned counsel appearing for the revision petitioners submitted that, the 1st petitioner along with her minor children, the 2nd and 3rd petitioners herein are living with her age old parents, who are not having sufficient means of income to meet out their own livelihood. Whereas, the respondent is a Pharmacy Agent and is earning about Rs.1,00,000/- per month and paying a maintenance of Rs.30,000/- in favour of the petitioners will not cause huge damage to the respondent. While so, the trial court, without considering any of the said facts had ordered for maintenance only in favour of the 2nd and 3rd petitioners that too only a meagre sum of Rs.4,000/- per month, which is not sustainable. Accordingly, he prayed for appropriate orders.

4. Per contra, learned counsel appearing for the respondent submitted that it is the 1st petitioner who refused to live with the respondent and she forcibly took the children along with her. Further, as the compromise talks initiated between the parties ended in vain, left with no other alternative, the respondent filed a divorce petition in HMOP.No.22 of 2022 and the trial court allowed the same on the ground



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of cruelty. The court below, on proper appreciation of the above said facts as well as the oral and documentary materials has fixed the maintenance only in favour of the children and refused to order for any maintenance in favour of the 1st petitioner/wife, which does not warrant any interference. Accordingly, he prayed for dismissal of this revision.

5. In response, the learned counsel for the petitioners submitted that, challenging the order passed in the divorce petition filed by the respondent in HMOP.No.22 of 2022, the petitioners filed an appeal before this Court and the same is pending.

6. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. There is no dispute about the marriage between the 1st petitioner/wife and the respondent/husband. The 1st petitioner is the wife and the 2nd and 3rd petitioners are children. It is to be pointed out that it is the duty of



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the husband to maintain his wife and child and the comforts, which were available to the spouse and child should not be lost due to the friction between the warring parties. Only to that end, Section 125 Cr.P.C. was brought into the statute. In such a backdrop, it becomes the duty of the husband to maintain his wife and child.

8. The grounds on which maintenance can be rejected to the wife can be only on the ground that wife is able to maintain herself and she has the requisite means to maintain herself and that she is living in adultery and where the person, who offers to maintain his wife on condition of her living with him and she refuses to live with him, only on such of those grounds, maintenance could be negated against the wife.

9. In the case on hand, it is the case of the respondent/husband that, though he is ready to maintain the 1st petitioner/wife if she comes and lives with him, but it is the 1st petitioner/wife who refused to unite with him. Further, a careful consideration of the material documents placed on record reveal that, the respondent/husband filed a divorce petition in



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HMOP.No.22 of 2022 and the same was allowed on the ground of cruelty, as the 1st petitioner/wife had refused to live with the respondent/husband, even though he offered to maintain his wife and children on condition of her living with him and relying upon the same, the trial court had rejected the 1st petitioner's request for payment of maintenance in her favour, in which this Court does not find any fault with.

10. Further, though it is the case of the petitioners that the respondent is a Pharmacy agent and is earning a sum of Rs.1 lakh per month, however, the same was disputed by the respondent and he claims that due to the harassment caused by the 1st petitioner and her family member by way of filing false and frivolous complaint against him, he was forced to leave his job and he is currently unemployed and is under the shelter of his sister. While so, it is the duty cast upon the petitioners to substantiate their case and the petitioners have miserably failed to establish the same and no oral or documentary evidence was produced by the petitioners either before this Court or before the trial court to show the monthly income of the respondent. Hence, in the absence of any proof,



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the trial court, appreciating the above in proper perspective, has granted a monthly maintenance of Rs.4,000/- in favour of the 2nd and 3rd petitioners alone, in which, this Court does not find any fault with and thereby, this court is not inclined to interfere with the same.

11. For the reasons aforesaid, this Criminal Revision Case stands **dismissed**. However, the 1st petitioner is at liberty to file a fresh petition under Section 125 of Cr.P.C. before the trial court for payment of necessary maintenance in her favour, in the event of succeeding the appeal preferred by her as against the order passed in HMOP.No.22 of 2022.

25.06.2024

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

To

The Family Court, Dharmapuri.

M.DHANDAPANI, J.



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