



Crl.R.C.(MD).No.204 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.12.2023

Pronounced on : 19.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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1.R.Mariyapillai

2.M.Parvathi

... Petitioners/Petitioners

Vs.

M.Mohanraj

... Respondent/Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the order passed in Cr.M.P.No.489 of 2018 in M.C.No.35 of 2017 on the file of the Family Court, Trichy, dated 28.01.2019 and allow the Criminal Revision Petition.

For Petitioner : Mr.C.Vakeeswaran

For Respondent : Mr.Shangar Murali

ORDER

The Petitioners have filed this petition challenging the order passed in amendment petition in Cr.M.P.No.489 of 2018 filed in M.C.No.35 of 2017 on the file of the learned Family Court, Trichy.



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2. The petitioners are the parents of the respondent. They filed maintenance case in M.C.No.35 of 2017 before the Family Court, Trichy, claiming the maintenance of Rs.20,000/-. During the pendency of the same, the petitioners have filed the memo. On the basis of the memo., the learned family judge, Trichy, has passed the following orders:

“This petition filed by the petitioner under Section 125 of Cr.P.C., on 05.04.2017 praying this Court to direct the respondent to pay the maintenance amount for a sum of Rs.10,000/- per month each petitioners (total Rs.20,000/- p.m amended as per order in Cr.M.P.No.489 of 2018 in M.C.No. 35 of 2017 dated 28.01.2019) and as maintenance from the date of filing this petition and the maintenance amount has to paid to the petitioners.

Both parties present. Memo filed and recorded to with draw the case. the parteis represented that they compromised with their son/respondent. Hence, petition is dismissed as withdrawn. No costs.”

Thereafter, the petitioner filed the amendment petition stating that to delete portion of the order stated as “***In the order dated 30.05.2018 (I) instead of total Rs.2,000/- p.m to be corrected as Rs.20,000/- (ii) instead of they compromised with their son/respondent to be corrected as willing to withdraw the above complaint and file it as his necessary in later.***” The said petition was allowed partly and dismissed the portion relating to the second clause stated as “***In the***



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result, this petition is allowed in part, by allowing the amendment of the order passed in M.C.No.35 of 2017 with regard to clause (I) of the details of amendment and the petition is dismissed in respect of clause (ii) of details of amendment.” challenging the same, the petitioner filed this revision.

3. The learned counsel appearing for the petitioners submitted that the petitioners have filed the memo only to withdraw the case, but the learned Family Judge, Trichy, without any basis, incorporated the portion that ***“The parties represented that they compromised with their Son/Respondent”***. The same was affected the pending case between the parties. Hence, the learned Family judge, Trichy, committed error in dismissing the petition for amendment. Therefore, this petition has been filed to set aside the order in Cr.M.P.No.489 of 2018 in M.C.No.35 of 2017.

4. The learned counsel appearing for the respondent submitted that the learned Family judge acted as per the representation made by the parties and the counsel on record. In the impugned order, it is stated that the learned Family Judge dismissed the same on the ground that memo was recorded and the compromise was entered into between the parties. Hence, the judicial act is not



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amenable by way of the amendment. As per Section 114 of the Indian Evidence Act, when the judicial Officer discharged his duty by rendering the Judgment on the basis of the submission of the counsel on record, the amendment petition is rightly dismissed by the learned trial judge. He further submitted that learned family judge passed the order after considering the demeanour of the witnesses. In the said circumstances, there can be interference in the order passed by the learned family Judge, Trichy.

5. This court considered the rival submissions made on either side and perused the record.

6. Admittedly, the petitioners are the parents of the respondent. They initially filed the maintenance petition in M.C.No.35 of 2017 on the file of the learned Family Court, Trichy claiming maintenance. It is stated in the petition that the respondent obtained settlement deed fraudulently and after obtaining the settlement, he failed to maintain them. Hence, they filed petition claiming maintenance of Rs.20,000/-. Pending the same, the petitioner filed the suit in O.S.No.99 of 2018 against the respondent to cancel the said settlement deed and consequential reliefs. In this circumstance, he filed memo to withdraw the



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maintenance case filed against the respondent. The contention of the memo reads as follows:

“Memo filed by the petitioners/party in persons:

It is humbly submitted that the petitioner is willing to withdraw the above complaint and file it as his necessary in later. Hence, the above claimant permit to withdraw by the petitioner and the same may be dismissed as withdrawn.

Hence, this memo may be kindly recorded.”

7. On the basis of the memo, there is no reference about the compromise and they sought permission to withdraw the same. In this circumstances, without any material available on record, the learned family judge erred in recording the matter as if the matter was compromised.

8. In the opinion of this Court before recording the said statement there should have been a written compromise and no written compromise placed before this Court. The petitioners challenged the settlement deed, which was fraudulently obtained by the respondent in his name and without making any payment of maintenance. In this circumstances, the recording of the statement that the parties entered into compromise is not in accordance with law. To record the compromise, there is some procedure contemplated under Order 23 Rule 3 of



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the Cr.P.C. The said Order 23 Rule 3 of Cr.P.C., specifically requires that the compromise to be recorded on the basis of the written compromise.

9. In the said circumstances, without compliance the contention of the respondent that they acted as per the provision under Section 114 of the Evidence Act is not correct. The Section 114 of the Evidence Act, is not acceptable in this Case. Section 114 of the Evidence Act, clearly stated that the act must be in accordance with law. This Court is of the considered opinion that statement of the learned Family judge is not legally correct. Hence, this Court is inclined to set aside the order and directed to delete the portion ie., “The parties represented that they compromised with their Son/Respondent”

10. Accordingly, this Criminal Revision petition is allowed and the order passed in Cr.M.P.No.489 of 2018 in M.C.No.35 of 2107 on the file of the Family Court, Trichy, dated 28.01.2019, is set aside.

19.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

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- 1.The Family Court,
Trichy.
2. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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**Pre-delivery Order made in
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19.01.2024