



Crl.R.C.No.876 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 02.06.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No.876 of 2021
and
Crl.M.P.No. 12384 of 2021

S.Roopaselvan

... Petitioner

Versus

1. K.Sabitha

2. Minor Harsha Mirthula

... Respondents

D/o.S.Roopaselvan

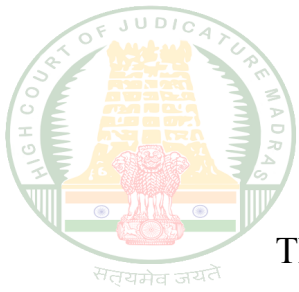
Represented by next friend natural guardian mother K.Sabitha

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C., to
set aside the fair and decreetal order dated 17.06.2020 passed in M.C.No.86 of
2018 on the file of the Family Court, Namakkal.

For Petitioner : Mr.S.Thirumurugan
for M/s. S.Senthil

For Respondents : Mr.G.C.Nelson Britto
for M/s.C.E.Pratap

ORDER



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WEB COPY This Criminal Revision Case had been filed to set aside the fair and decreetal order dated 17.06.2020 passed in M.C.No.86 of 2018 on the file of the Family Court, Namakkal.

2. The brief facts, which are necessary for the disposal of this Criminal Revision, are as follows:-

2.1. The maintenance case in M.C.No.86 of 2018 had been filed by the wife/first Respondent herein. As per the averments in the petition for maintenance, the marriage between the first Petitioner and the Respondent was an arranged marriage performed by the elders of both families and the marriage was performed on 11.09.2013 at Shri Palaniappa Kalyana Mandapam, Ottanchathiram, Dharapuram Road at Ottanchatram. After the marriage, the first Petitioner/wife and the Respondent/husband was residing at Bengaluru where the Respondent/husband was employed as a Software Engineer in McAfee Software (India) Private Ltd., Spaces Fairway, Fairway Business Park, Survey Nos.10/1, 11/2 and 12/2B of Chalaghutta Village, Next to Embassy Golf Links, Domlur, Bengaluru – 560 071, Karnataka.

2.2. In the course of the matrimonial life, the first Petitioner/wife became pregnant. In the seventh month of pregnancy, as per the customary



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practice between the spouses, the elders of both the families performed Valaikappu Ceremony at Bengaluru. After the Valaikappu Ceremony, the first Petitioner/wife was taken to her parental house by her parents. On 08.09.2015 she delivered a female child/second Petitioner. The child was named as Harsha Miruthula. As per the petition averments in M.C.No.86 of 2018, the birth of the child was informed to the Respondent/husband and in-laws by the family of the first Petitioner/wife, however, none of them visited the child. The parents of the first Petitioner/wife are daily wage labourers and with great difficulty, they are maintaining their daughter and granddaughter. Whereas the Respondent/husband is working as a Software Engineer and earning Rs.1,25,000/- per month. The Respondent/husband is having agricultural lands and buildings and through which, the Respondent/husband and his family earns not less than Rs.5,00,000/- per month apart from the salary drawn by the Respondent/husband. Still the Respondent/husband failed to maintain the Petitioners/wife and the child. Therefore, the wife had filed M.C.No.86 of 2018 seeking Rs.30,000/- per month from the Respondent/husband .

2.3. The Respondent/husband filed counter resisting the claim. Also, the Respondent/husband had filed H.M.O.P.No. 4058 of 2018 at Bengaluru under Section 13(1)(ia), 13(1)(b) of Hindu Marriage Act, 1955 seeking divorce against the first Petitioner/wife for desertion and cruelty. The contents of the



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H.M.O.P.No.4058 of 2018 was reiterated as counter in M.C.No.86 of 2018

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stating that after marriage, the husband took the wife on honeymoon to Kerala.

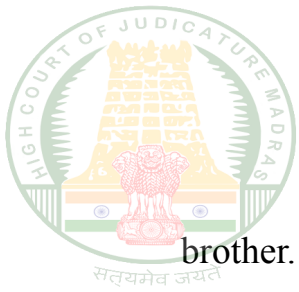
After the marriage, they had booked a flat on rent and celebrated house warming ceremony. The Respondent/husband purchased all the household articles including provisions. The marriage expenses was also raised by the husband. When the Respondent/husband wanted to resign his job at Bengaluru and join a job at Chennai, the first Petitioner/wife resisted claiming she cannot adjust to hot weather at Chennai. The Respondent/husband was overburdened with work at Bengaluru, still he continues the job considering the request of his wife to continue the job at Bengaluru. Also the the first Petitioner/wife was suffering from Thyroid and Diabetics and she was given treatment at Bengaluru. The first Petitioner/wife is not cordial towards the family members of the husband. She uses abusive words against the husband. When the Respondent/husband went to meet her after the Valaikappu Ceremony in her native place - Ottanchatram, he gave her Rs.20,000/- for medical expenses. On subsequent visits, he gave her Rs.2,000/- which she did not accept it. She wanted Rs.20,000 for every visit and not for every month. She used to pick up quarrel even through mobile phone and ill-treat her husband. After delivery of the child, when the message received by the Respondent/husband, he along with his parents and sister eagerly went to meet the child but they were treated badly by the first Petitioner/wife and her parents. Subsequently, the



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Respondent/husband could not meet them. The father-in-law threatened the

Respondent/husband stating that the brother of first Petitioner/wife viz., Suresh is a rowdy and he will go to any extent of even annihilating him. Also the brother of the first Petitioner in the maintenance case, after consuming alcoholic drinks, picked up quarrel through the mobile phone of the Respondent in the maintenance case. Since he was using intemperate language the Respondent in the maintenance case switched it off. He again contacted the mother of the Respondent and father of the Respondent. Since they knew about his intemperate language, they did not pick up the phone. Under those circumstances, the Respondent/husband did not visit the family of the in-laws. Subsequently, the relatives, uncles of the Respondent/husband had peace meetings with the parents of the first Petitioner in the maintenance case and only after the Respondent along with his parents, uncles was able to meet the child and the first Petitioner in the maintenance case conceded that she will join in the matrimonial home. Subsequently, she left the matrimonial home, as he wanted to be with her parents. Subsequently, she gave information that she had taken up a job as Lecturer in PGP Arts and Science College, Namakkal-Karur Main Road, Namakkal District where she is paid monthly salary of Rs.25,000/- per month. The request of the Respondent/husband that till the child is able to take care of herself, she can avoid joining as a Lecturer was not headed to. The first Petitioner/wife is under the spell of the parents and her



brother. She never respects the words of the Respondent/husband or the parents of the husband. Every time, she finds fault with the Respondent/husband and parents of the husband. Therefore, on that ground, the Respondent/husband filed H.M.O.P.No.4058 of 2018 before the learned Judge, Family Court, Bengaluru, seeking dissolution of marriage. The contumacious behaviour of the first Petitioner/wife was treated as grounds for divorce. She does not have an intention to live as a dutiful wife and living in peaceful, harmonious atmosphere. Therefore, frustrated by the conduct of the first Petitioner/wife, the Respondent/husband was forced to file a petition for dissolution of marriage. The contents of the petition in HMOP No.4058 of 2018 was filed as counter in the maintenance case by the Respondent/husband. During enquiry, the first Petitioner in maintenance case examined herself as P.W-1 and she had a marked three documents as Ex.P-1 to Ex.P-3. Ex.P-1 is the marriage invitation card. Ex.P-2 is the marriage registration certificate. Ex.P-3 is the birth certificate of their daughter Harsha Mirthula. The Respondent/husband had examined himself as R.W-1 and no documents had been marked on his side.

2.4. The Respondent/husband in the counter had stated that as the father of the child, he is ready to pay maintenance for the child. Since the first Petitioner/wife is employed as Lecturer/Assistant Professor in a private College



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in Namakkal and earning Rs.25,000 per month, he is not obliged to pay maintenance to her. Also, he had stated that he is working in Bengaluru on a temporary basis. Therefore, he is likely to lose his job any time. Therefore, he requested that the maintenance case be dismissed against the wife and ordered against the minor child.

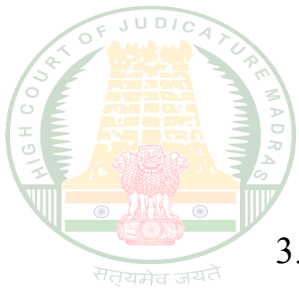
2.5. On appreciation of evidence, the learned Judge, Family Court, Namakkal, had in the discussion of evidence stated that both parties had not filed any document as proof of salary either their own salary or the salary of other party. Therefore, based on presumption, the learned Judge had arrived at a conclusion that the first Petitioner/wife claimed that she is on a temporary job as a college Lecturer/Assistant Professor and she was earning not Rs.25,000/- as claimed by the Respondent/husband but was earning only Rs.10,000/- and the child had been admitted in a School and she has to pay Rs.60,000/- for the School fees which was disputed by the Respondent/husband when he had adduced evidence as R.W-1. In the course of the cross-examination, he claimed that Rs.60,000/- is high and he undertook to pay reasonable amount for the maintenance of the minor child. The learned Judge in the course of discussion of evidence presumed that the Respondent/husband having not furnished any document as proof of the claim of salary or disputing the claim of salary by the wife that he is drawing Rs.1,20,000/- as Software Engineer and



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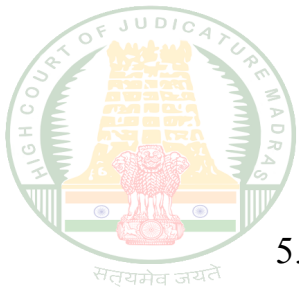
Rs.5,00,000/- income from the agricultural properties and residential properties. The learned Judge had considered the cross examination of the first Petitioner/wife on behalf of the Respondent/husband that Respondent/husband had availed loan for which he had to pay Rs.20,000/- per month towards repayment of loan. Therefore, Rs.1,20,000/- is not the carry home salary. At the same time, in the counter the Respondent/husband had claimed that “the Respondent is having sufficient income to give his child a comfortable coupled with good education as he has the fervor to give the same as dutiful father”. That undertaking was taken by the learned Judge to grant Rs.15,000/- to the minor child and Rs.5,000/- to the wife as she claimed that she is receiving only Rs.10,000/- as salary. She had admitted that the Respondent/husband is employed temporary in Bengaluru. Considering the fact that both are in temporary jobs, the learned Judge had ordered Rs.5,000/- per month, for the first Petitioner/wife and Rs.15,000/- per month, for the minor child, totally Rs.20,000/- per month.

2.6. Aggrieved by the grant of Rs.5,000/- to the first Petitioner/wife as maintenance, the Respondent/husband as Revision Petitioner had filed this Revision Case seeking to set aside the order of grant of maintenance to the first Petitioner/wife.



3. The learned Counsel for the Revision Petitioner submitted that the Revision Petitioner who is the Respondent in M.C.No.86 of 2018. It is the contention of the learned Counsel for the Revision Petitioner that the marriage between the Revision Petitioner and the first Respondent took place on 11.09.2013. It was an arranged marriage. The Revision Petitioner is employed at Bengaluru as a Software Engineer. While so, in the course of their matrimonial life, the first Respondent/wife became pregnant. Following the ritual of Valaigappu, she was taken back by the parents of the first Respondent to their house for delivery. After going to her parents house, she did not return and there was no communication from the first Respondent/wife. The attempt of the husband to reach out the first Respondent/wife was also resisted by the first Respondent/wife. After the delivery of the child, there was no communication between the Revision Petitioner and the first Respondent. The attempt of the Revision Petitioner/husband to meet his wife and the child had failed.

4. It is the submission of the learned Counsel for the Revision Petitioner/Husband that the only attempt of the first Respondent/wife is to use the money from the Revision Petitioner/husband for her luxurious life and she is not interested in the matrimonial life.



5. The learned Counsel for the Revision Petitioner invited the attention of this Court to Section 125(4) of the Cr.P.C wherein it is stated that if the wife, without any reason, is separately living from the matrimonial home, she is not entitled to maintenance. Section 125 (4) of Cr.P.C. is extracted as under:

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

(4) No wife shall be entitled to receive an (allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be) 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.”

In the light of the fact that the husband had preferred H.M.O.P.No.4058 of 2018 before the learned Judge, Family Court at Bengaluru which was subsequently transferred to the file of the Family Court, Erode, without sufficient cause the wife had withdrawn from the family of the husband which is ground for filing of petition for dissolution of marriage on the ground of desertion and cruelty. Under those circumstances, she is not entitled to maintenance. The learned Judge failed to consider those aspects and had granted Rs.5,000/- to the wife.

6. It is the further submission of the learned Counsel for the Revision Petitioner that the wife is a qualified person working as Professor in PGP Arts



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and Science College in Namakkal. Also the learned Counsel for the Revision

Petitioner submitted that the first Respondent/wife had in her evidence admitted that she is employed as Professor. The claim of the Respondent in Maintenance case/Revision Petitioner that the first Respondent/wife is drawing a salary of Rs.25,000/- was disputed by the wife claiming that she is drawing only Rs.10,000/- as Professor in PGP Arts and Science College. Therefore, it is the submission of the learned Counsel for the Revision Petitioner that the order passed by the learned Judge, Family Court, Namakkal granting Rs.5,000/- towards maintenance to the wife and Rs.15,000/- for the child is exorbitant. It is the contention of the Revision Petitioner/husband that the first Respondent/wife is not entitled to claim maintenance. Therefore, the order of maintenance is to be set aside. The Husband as Respondent in Maintenance case is willing to take back the child under his custody and provide her the necessities of life including Education and other maintenance.

7. Further, the learned Counsel for the Revision Petitioner submitted that the Petition for divorce was filed by the Husband in Bengaluru in the year 2018 which was subsequently withdrawn and transferred to the Family Court, Erode and re-numbered as O.P.No.215 of 2023. It is still pending. Therefore, it is the submission of the learned Counsel for the Revision Petitioner that the order passed by the learned Judge, Family Court, Namakkal, in M.C.No.86 of



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2018, dated 17.06.2020 is to be set aside.

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8. The learned Counsel for the Respondents vehemently objected to the line of arguments made by the learned Counsel for the Revision Petitioner and invited attention of this Court to the averments in the maintenance case by the first Respondent/wife wherein she had stated that she was ill-treated for not bringing dowry. Even though the parents of the first Respondent/wife had informed the birth of the child to the Revision Petitioner/husband and the parents of the Revision Petitioner/husband, they did not come to meet the child at the earliest point of time. In the course of evidence, the Revision Petitioner/husband as R.W-1 admitted that he had met the child only after three months. In the course of cross-examination, he claimed ignorance of the death of his father-in-law.

9. The learned Counsel for the Respondents invited the attention of this Court to the cross-examination of R.W-1 before the learned Judge, Family Court wherein he had claimed ignorance of the fact that the birth of the child under the hospital in which the wife delivered the child. Subsequently, he claimed that he had seen the child four or five months after the birth of the child during the Temple Kumbhabishekam of Punniyagoundanvalasu Temple. That shows there was strained relationship between the parties.



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10. The Revision Petitioner had in the maintenance case filed a counter claiming that the parents of the first Respondent/wife are poor daily wage earners whereas in the evidence he disputes such claim. Therefore, the order of the learned Judge, Family Court, even though there is evidence that the wife is employed as a Professor on temporary basis, on assumption that she is drawing Rs.10,000/- had granted Rs.5,000/- as a responsible husband has to pay his wife. He had in the cross-examination stated that the wife is better qualified, she can get a better job. Therefore, he concedes that she is qualified to get a job. When he claims that he is in temporary job, he shall not prevent her from joining in any job and that cannot be taken as a weapon to refuse maintenance for the wife. Therefore, the learned Counsel for the Respondent sought to dismiss this Revision.

Point for consideration:

Whether this Revision Case is to be allowed and the order dated 17.06.2020 passed by the learned Judge, Family Court, Namakkal, in M.C.No.86 of 2018 is to be set aside regarding the grant of Rs.5,000/- per month to the wife of this Revision Petitioner?

11. Heard the learned Counsel for the Revision Petitioner



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Mr.S.Thirumurugan and the learned Counsel for the Respondents

Mr.G.C.Nelson Britto for Mr.C.E.Pratap.

12. Perused the typed set furnished by the Revision Petitioner containing the deposition of first Respondent/wife and the deposition of the Revision Petitioner/husband, the order passed by the learned Judge, Family Court in M.C.No.86 of 2018, dated 17.06.2020.

13. On perusal of the evidence and the order passed by the learned Judge, Family Court, Namakkal, the observation of the learned Judge while appreciating the evidence stating that both the parties had not furnished pay slip or pay particulars as document either their own or on the other side. Therefore, based on presumption, the learned Judge, Family Court, Namakkal, had come to the conclusion that even on the lower side Rs.1,25,000/- is the salary of the person employed as Software Engineer in Bengaluru. Out of which, he had to pay Rs.20,000/- towards repayment of loan. Therefore, the Revision Petitioner/husband had claimed in the counter that with his resources he is able to safeguard the interest of the minor child to provide her maintenance and education in a better, comfortable manner and taking advantage of that averment, he had ordered Rs.15,000/- as monthly maintenance for the minor child and ordered Rs.5,000/- to the wife/first



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Respondent herein since there was no documentary proof regarding claim by the Revision Petitioner/husband that the first Respondent/wife is employed as Professor and drawing salary of Rs.25,000/-. The wife/first Respondent had not marked document as proof of salary. She denied the suggestion of the learned Counsel for the husband/Revision Petitioner that she is drawing not less than Rs.25,000/- per month as salary and claimed that she was paid only Rs.10,000/- per month. Considering the plight of the Professors in private colleges, the claim made by the husband/Revision Petitioner that the wife/first Respondent is paid Rs.25,000/- is denied by the wife, has to be accepted. Since the wife/first Respondent herself had claimed that she is employed as Professor in a private college, she is not entitled to maintenance. The Court has to draw adverse inference regarding the salary of the wife. The claim that she is paid Rs.10,000/- cannot at all be accepted. That is too low considering the status of temporary Professors in a college are paid Rs.25,000/- invariably across the State. Therefore, the suggestion by the husband/Revision Petitioner even though denied by the wife/first Respondent has to be accepted even otherwise she is capable of earning. As per the counter and as per the copy of the HMOP filed along with the type set, the husband/Revision Petitioner had claimed that the wife had been not in mental state to co-habitat with her husband. As an educated woman, she can seek employment wherever she lives with the husband. As a Software Engineer, he will be employed only in towns



an cities where there are Information Technology Parks in TIRE-II cities minimum other than Metropolitan cities. Therefore, the employment opportunities are available for the wife also. Still, she is not willing to live with the husband forcing him to file a petition seeking dissolution of marriage on the ground of desertion and cruelty. Therefore, as pointed out by the learned Counsel for the Revision Petitioner/husband, Section 125 (4) of Cr.P.C. applies to the facts of this case which was lost sight by the learned Judge, Family Court, Namakkal, while appreciating evidence. On sympathy, the learned Judge had granted Rs.5,000/- to the wife. Therefore, this is fact of the case which squarely applies to Section 125 (4) of Cr.P.C., the evidence of the husband cannot be faulted. While appreciating evidence, the learned Judge found that the husband/Revision Petitioner had fairly conceded as a responsible father he is ready to pay the necessary expenses for a comfortable life for his minor daughter. Therefore, he has not agitated or aggrieved for grant of maintenance to the minor child. He had come by way of revision to set aside the judgment regarding grant of Rs.5,000/- per month in favour of the wife, ignoring the averments in the counter and ignoring the evidence of the husband.

14. In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioner and as against the first



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Respondent/wife. The order dated 17.06.2020 passed by the learned Judge, Family Court, Namakkal, in M.C.No.86 of 2018 regarding the grant of Rs.5,000/- per month to the first Petitioner/wife of this Revision Petitioner is to be set aside as perverse.

In the result, **this Criminal Revision is allowed.** The order dated 17.06.2020 passed by the learned Judge, Family Court, Namakkal, in M.C. No.86 of 2018 regarding the grant of Rs.5,000/- per month to the first Petitioner/wife of this Revision Petitioner is set aside. The maintenance amount of Rs.15,000/- per month to the minor child by the learned Judge, Family Court, Namakkal, in M.C. No.86 of 2018, dated 17.06.2020 is confirmed. Consequently, connected miscellaneous petition is closed.

02.06.2025

srm

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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To

1. The Family Court, Namakkal.
2. The Section Officer,
Criminal Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

srm

Order made in
Criminal Revision Case No.876 of 2021

02.06.2025