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Crl.R.C.No.1453 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.09.2024
PRONOUNCED ON : 09.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

**Crl.R.C.No.1543 of 2024
and
CRL M.P.No.12866 of 2024**

S.Venkatesh Guptha @ Babu ... Petitioner / Respondent

Vs.

1.G.V.Varalakshmi
2.Sri Varshini

... Respondents / Petitioners

PRAYER: Criminal Revision Petition filed under Section 401 of Cr.P.C., to call for the records pertaining to the order in M.C.No.10 of 2019, dated 29.04.2024 passed by the learned Judicial Magistrate-1, Gobichettipalayam and set aside the same.

For Petitioner : Mr.T.Saravanan

For Respondents : Mr.N.Manoharan

ORDER

Challenging the order dated 29.04.2024, passed by the learned Judicial Magistrate-1, Gobichettipalayam, in M.C.No.10 of 2019, the Petitioner is before this Court with the present Revision.



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2. Mr.T.Saravanan, the learned counsel appearing for the Petitioner would submit that marriage between the Petitioner and the 1st Respondent was solemnized on 13.08.2000 at "Shri Vasavi Vasantha Mandapam" and out of wedlock the 2nd Respondent born to them on 03.10.2002. Ever since from the marriage, the 1st Respondent never treated the petitioner and his family members humbly nor being as a dutiful wife. The Petitioner was running a photo studio at Salem and the same is only a seasonal business and there is no regular income from the same, whereas, the 1st Respondent is doing various business such as fancy Jewellery, Tailoring, MLM, etc., and earning several Lakhs of Rupees and she is an Income Tax Assessee. Further, the 1st Respondent at a point of time, went to extreme step of consuming poison in order to threaten the petitioner, and immediately she was admitted in a hospital by the petitioner and spent Rs.2,25,000/- for her recovery. In the year 2017, the 1st Respondent left the matrimonial home to her parents house at T.N.Palayam, Gobichettipalayam Taluk and refused to come back even after several Panchayats by the elders and family members. Hence having no other alternative, the petitioner filed a Petition for divorce in F.C.O.P.No.442 of 2018, before the Family Court, Salem.



Subsequently, by virtue of order passed by this Court Tr.C.M.P.No.442 of 2019, the F.C.O.P.No.442/2018 got transferred to the file of Subordinate Court, Gobichettipalayam and renumbered as H.M.O.P.No.2 of 2020.

3. The learned counsel for the petitioner further submitted that 1st respondent filed an application in I.A.No.1 of 2020 in H.M.O.P.No.2 of 2020, claiming interim maintenance of Rs.20,000/- per month and Rs.1,00,000/- towards litigation expenses. On 27.01.2020, the learned Subordinate Judge ordered to pay Rs.3,000/- per month to the Respondents towards the interim maintenance. Even though the petitioner is earning Rs.12,000/- per month, he is regularly paying the amount of Rs.3000/- to the Respondents. Subsequently, the Respondents filed yet another Application for interim maintenance in I.A.No.2 of 2020 in H.M.O.P.No.2 of 2020, on 03.03.2020, claiming Rs.40,000/- per month towards maintenance. Pending H.M.O.P., the Respondents filed a Petition for maintenance in M.C.No.10 of 2019 before the learned Judicial Magistrate No.1. The learned Magistrate without considering the Exhibits marked by the petitioner, which are all Court documents and Government documents, has simply relied upon the receipts of private school marked as Ex.A-1 in the absence of



any evidence on the side of the school. Without considering the oral and documentary evidence, the trial Court awarded a sum of Rs.7,500/-p.m., to the 1st Respondent and Rs.7,500/-p.m., to the 2nd Respondent, towards maintenance maintenance, which is highly excessive and therefore, prayed to set aside the same.

4. Mr.N.Manoharan, the learned counsel appearing for the Respondents would submit that the marriage between the 1st Respondent and the Petitioner was solemnized on 13.08.2000. At the time of marriage, the 1st Respondent's father gifted 40 sovereigns of gold ornaments along with 4-1/2 Kgs of Silver articles towards 'Seer" to the Petitioner. Out of wedlock, a female child was born on 03.10.2002, by name "Sri Varshini", who is studying 11 Standard in "Sree Gurukulam Matriculation Higher Secondary School", Gobichettipalayam Taluk, Erode District. Earlier, her daughter Sri Varshini was studying in Vidya Beedam, at Salem upto 9th Standard. During that period, due to physical and mental torture inflicted by the Petitioner, the Respondent consumed poisonous substance and recovered with the help of medication. During that period, she was provided counseling to get rid from her mental stress inflicted by the Petitioner and was advised by the Counselors to take rest for a while,



hence, she went to her parental home situated in T.N.Palayam, Gobichettipalayam Taluk, in Erode District.

5. The learned counsel for the Respondents further submitted that the Petitioner is holding back 40 Sovereigns of Gold Ornaments of the Respondents. The 1st Respondent's father given sum of Rs.3,00,000/- in order to meet out the unlawful demand of the Petitioner, the same was deposited in the Post Office and out of the income derived from the deposit, she purchased 150 gms gold and also invested in LIC Mutual Funds. Latter, the Petitioner withdrawn the above said deposit amount from the 1st Respondent. In fact, the Petitioner retained 40 Sovereigns of Gold Ornaments and Rs.8,00,000/- cash and 150 gms of pure gold and 4-1/2 kgs of Silver articles. The Petitioner is bound to maintain his wife and minor daughter, but he refused to do so. The Petitioner running a Studio and under the name and style of "Sri Prabhu Videos" at No.315, Kaliya Pillai Complex, Brindhavan Road, SKS Hospital opposite, Salem, for the past 25 years. Now, he is having highly advanced digital equipment's for his business. Out of the business, he is earning a sum of Rs.2,00,000/- per month. Unfortunately, the Petitioner, who is having sufficient means, is purposefully neglecting and refused to



maintain the Respondents. Hence, the Respondents filed the above Application for interim maintenance of Rs.50,000/- per month. But, the Court below awarded only a meagre sum of Rs.7,500/- for the 1st Petitioner and Rs.7500/- to the 2nd Petitioner. Hence, the learned counsel for the Respondent prays for dismissal of the Revision.

6. I have heard the learned counsel appearing on either side and perused the materials available on record.

7. It is not in dispute that the marriage between the Petitioner and the 1st Respondent was solemnized on 13.08.2000 at “Shri Vasavi Vasantha Mandapam” and out of wedlock the 2nd Respondent born to them on 03.10.2002. According to the Petitioner, the Petitioner running a Photo Studio at Salem and the same is only a seasonal business and there is no regular income, but the 1st Respondent is doing various business and earning several Lakhs of Rupees and she is an Income Tax Assessee. In the year 2017, the 1st Respondent left the matrimonial home to her parents house at T.N.Palayam, Gobichettipalayam Taluk and refused to come back even after several Panchayats by the elders and family members. The contention of the petitioner that, as per the Provision under Section 125(4) of Cr.P.C.,



the petitioner is not entitled to pay maintenance to the Respondents, cannot be accepted, for the reason that due to physical and mental torture inflicted by the Petitioner, the 1st Respondent consumed poison and latter recovered with the help of medication. During that period, she was provided counseling to get rid from her mental stress inflicted by the Petitioner and was advised by the Counselors to take rest for a while, hence, she went to her parental home. Further, when she returned to matrimonial home, the Petitioner not allowed the Respondents to enter the house. At about 11.00 p.m., the 1st Respondent was in street, the Patrolling police enquired and on their intervention only, the 1st Respondent was allowed to enter into the matrimonial home and therefore, absolutely Section 124(4) of Cr.P.C., will not attract.

8. No doubt, it is for the husband to prove that his wife is living in adultery and it is not been proved by the Petitioner within the meaning of the expression "adultery" as used in Section 125(4) of Cr.P.C., The husband cannot get over his liability to pay maintenance merely claiming, 1st Respondent is an Income Tax Assessee and earning more than Rs.2,00,000/- per month. Petitioner to produce and adduce evidence to establish his contention, but no documents



Crl.R.C.No.1453 of 2024

adduced on the side of the petitioner. It is seen that the Petitioner, in order to prove the income of the 1st Respondent, has produced “Income and Expenditure Account for the Year Ended on 31.03.2008” and “Income and Expenditure Account for the Year Ended on 31.03.2009” of the 1st Respondent. The Petitioner not produced any statement of Income Tax in the subsequent years to substantiate his claim. Further, the contention of the Petitioner that the business at present he is doing is a seasonal business and his actual income only is Rs.12,000/- per month cannot be accepted without any evidence.

9. In view of the foregoing reasons, this Criminal Revision stands dismissed, confirming the order, dated 29.04.2024, passed in M.C.No.10 of 2019, by the learned Judicial Magistrate No.1, Gobichettipalayam. Consequently, the connected Miscellaneous Petition is also dismissed.

09.01.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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Crl.R.C.No.1453 of 2024

To

1. The Judicial Magistrate No.1,
Gobichettipalayam.
2. The Public Prosecutor,
High Court, Chennai.



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Crl.R.C.No.1453 of 2024

M.NIRMAL KUMAR, J.

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Pre-Delivery Order made in

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