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CrI.RC.No.1899 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.RC.No.1899 of 2024

Vanjulavalli

... Petitioner

Vs.

G G.Sundarajan @ Suresh Babu

... Respondent

Prayer: Criminal Revision Case filed under Section 438 B.N.S.S. 2023, to set aside the order dated 20.04.2024 passed in M.C.No.373 of 2016 on the file of the V Additional Family Court at Chennai dismissing the maintenance petition.

For Petitioner	: Mr.V.Ramamurthi for Ms.R.Mahalakshmi
For Respondent	: Mr.S.S.Swaminathan

ORDER

This Criminal Revision Case has been filed by the petitioner to set aside the order dated 20.04.2024 passed in M.C.No.373 of 2016 on the file of the V



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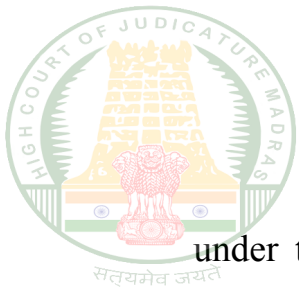
Additional Principal Family Court at Chennai, dismissing the maintenance

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petition.

2. The petitioner is the wife of the respondent herein.

3. The case of the petitioner is that she filed a maintenance case against the respondent in M.C.No.373 of 2016 before the V Additional Family Court at Chennai, invoking Section 125 Cr.P.C., seeking monthly maintenance of Rs.30,000/-. The said petition came to be dismissed by order dated 20.04.2024. Hence, challenging the same, she has filed the present revision.

4. The learned counsel for the petitioner/wife submitted that the respondent had filed an O.P. for divorce before the Family Court, Chennai in O.P.No.591 of 2011. Subsequently, based on the petition filed by the petitioner, the O.P. was transferred to the Family Court, Trichy and re-numbered as O.P.No.361 of 2014 and by order dated 10.06.2016, divorce was granted on the ground of non-consummation of marriage and non co-operation for conjugal relationship. During the matrimonial proceedings, the petitioner was



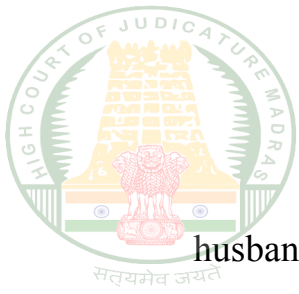
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under the care and custody of her parents. Therefore, she filed the transfer

petition before the Court below. Subsequently, her parents passed away.

Therefore, she came to Chennai to search for job. Since the petitioner was unable to maintain herself, she filed the maintenance case in M.C.No.373 of 2016 before the V Additional Principal Family Court at Chennai. But the same was dismissed on the ground that the petitioner suppressed her employment, income as well as Bank statement. The learned Judge failed to consider that the petitioner is not working anywhere and she is depending on her brother.

Though divorce was granted, still the petitioner is entitled to get maintenance from the respondent/husband. As per Section 125 Cr.P.C., a wife including divorced wife, who is having no means to maintain herself, is entitled to maintenance, unless she enters into second marriage or the husband establishes any disqualification as provided under the said provision of law. But, no disqualification is established by the respondent. The respondent is a man of means and since the petitioner is unable to maintain herself, as a dutiful



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husband, the respondent is liable to maintain the petitioner (wife). The

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petitioner herself marked the Bank statement during cross-examination and that she has no income at all. However, the Family Court held that the petitioner suppressed her financial status and income and the maintenance petition was dismissed. After the decree of divorce, the petitioner (wife) filed an appeal before this Court (Madurai Bench) and unfortunately, the same was dismissed for non-prosecution. Further, the respondent/husband has not established that the petitioner left the matrimonial home voluntarily without any valid reason. The divorce was granted only on assumption and conjunction and the same cannot be a ground for dis-allowing the maintenance case. Therefore, the learned counsel prayed that the revision may be allowed and maintenance may be ordered.

5. The learned counsel for the respondent/husband submitted that from the date of marriage, the petitioner was not co-operating for conjugal rights and without any valid reason, she left the matrimonial home. After trying his level



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best, the respondent (husband) filed the O.P. for divorce before the Family

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Court, Chennai in O.P.No.591 of 2011. Subsequently, the petitioner filed a petition to transfer the case to Trichy and the same was allowed and the case was transferred to Principal Family Court, Trichy and re-numbered as H.M.O.P.No.361 of 2014. Subsequently, the Judge, Family Court granted divorce by order dated 10.06.2016 on the ground of cruelty, especially for non-consummation of marriage and non co-operation for conjugal relationship. Challenging the said order dated 10.06.2016, though the petitioner/wife filed an appeal before the Madurai Bench of this Court, however, she allowed the appeal to be dismissed for non-prosecution and as on date, she has not taken any steps to restore the said appeal. Thereafter, she filed the maintenance case in Chennai with an intention to harass the respondent/husband. Since the divorce was granted on the ground of non-consummation of marriage which amounts to cruelty, the petitioner is not entitled to maintenance. Further, the petitioner/wife is a graduate and also working as Auditing Consultant in



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M/s.Mangal and Mangal, Trichy and getting income periodically, however, she

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had not produced her Bank statement. Subsequently, when the case was reserved for orders, she produced the Bank statement / Ex.P.7 which showed that the petitioner was getting income periodically from various sources, for which the petitioner took the defence that it is a joint account of the petitioner and her brother and the money transaction shown in the Bank account is that of her brother's and that the petitioner is not an earning person. However, to prove the same, the petitioner neither examined any witness, nor produced any document. The respondent (husband) reiterated that the petitioner is an earning person and she is a woman of means. The Family Court, on finding that the petitioner had not approached the Court with clean hands, dismissed the maintenance petition. Therefore, there are no merits in the revision petition and the same is liable to be dismissed.

6. Heard and perused the materials available on record.

7. The relationship of the parties is not in dispute. It is seen that the



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respondent/husband filed a petition for divorce before the Family Court in Chennai in O.P.No.591 of 2011 and the same was transferred to the Family Court, Trichy and re-numbered as H.M.O.P. No.361 of 2014 based on the petition filed by the petitioner/wife and subsequently, divorce was granted by order dated 10.06.2016. Aggrieved by the same, the petitioner (wife) preferred an appeal in C.M.A.No.878 of 2016 before this Court and the same was dismissed for non-prosecution and as on date, no appeal pending. Only, thereafter, the revision petitioner/wife filed the maintenance case in M.C.No.373 of 2016 before the V Additional Principal Family Court at Chennai.

8. A perusal of the records shows that the petitioner herself admitted that she is a Graduate. The respondent/husband filed the divorce petition on the ground of cruelty, especially for non-consummation of marriage and during cross-examination in the matrimonial O.P., the petitioner/wife herself admitted that there was no consummation of marriage at all. For one reason or other, the



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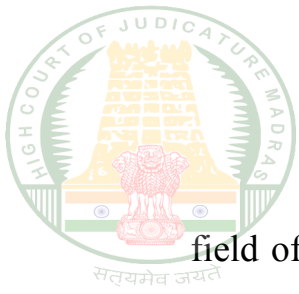
petitioner is not co-operating for consummation of marriage. Therefore, the

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purpose of marriage itself is defeated and therefore, the respondent/husband was constrained to file the petition for divorce on the ground of non-consummation of marriage, which amounts to cruelty and the same was also granted. There is no challenge as on date as against the divorce order.

9. Though divorced wife is entitled to maintenance, the grounds taken for divorce and the reason given for the grant of divorce, cannot be ignored. The petitioner neither stated, nor established that the marriage was consummated or the petitioner was always co-operating for the consummation of marriage or the respondent only refused or neglected the petitioner.

10. Further, since the petitioner is a Graduate, she can easily maintain herself. As per Section 125 Cr.P.C., the wife who is unable to maintain herself alone is entitled to get maintenance from the husband. Now, the provision under Section 125 has been incorporated in the Criminal Procedure Code, 1973 to seek maintenance. In this regard, it is to be noted that nowadays, even in the



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field of education, women are also equally competing with men. Employment ratio is also going high and women also are equally working with men in all fields nowadays.

11. It is not as if the petitioner/wife in this case, is an illiterate. She is a Graduate and she is able to maintain herself.

12. Considering the scope and object of Section 125 Cr.P.C. and the fact that the petitioner-wife is a fully qualified person to do job for her survival, this Court finds no compelling reasons to interfere with the impugned order of the Family Court. Hence, there are no merits in the revision petition. Accordingly, this Criminal Revision Petition is dismissed.. However, the petitioner (wife) is at liberty to work out her remedy in the manner known to law.

02.04.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No
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To

The V Additional Principal Family Court
Chennai

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P.VELMURUGAN. J.

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