



CRL.OP(MD) NO.10540 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

CRL.O.P (MD) No.10540 of 2024

and

CRL.M.P (MD).No.7082 of 2024

Sonai

... Petitioner

.VS.

Kandhadevi

... Respondent

PRAYER: Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023/Section 482 of Criminal Procedure Code, to call for the records pertaining to the proceedings in Cr.R.P.No.7 of 2023 on the file of the learned Principal District Court, Virudhunagar at Srivilliputhur to confirming the order passed in M.C.No.27 of 2019 dated 17.04.2023 on the file of the learned Judicial Magistrate Court No.II, Sivakasi, Virudhunagar District and to set aside the same.

For petitioner : Mr.R.Balamuruganantham

For Respondent : Mr. V.Sasikumar



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ORDER

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This petition has been filed by the petitioner to set aside the order passed by the learned Principal District Judge, Srivilliputhur in Cr.R.P.No.7 of 2023 dated 05.06.2024 confirming the order passed in M.C.No.27 of 2019 dated 17.04.2023 on the file of the Judicial Magistrate Court No.II, Sivakasi, Virudhunagar District.

2. The short facts necessary to dispose the petition is as follows:

i). The petitioner is the husband of the respondent and their marriage solemnized on 19.01.2018 at Madurai koodal Alagar Perumal Temple. Thereafter, due to misunderstanding, the petitioner's wife went to her parents house on 02.09.2018 and thereafter, the petitioner has refused to take back the respondent to the matrimonial house. The petitioner is working in the Police Department and earning a sum of Rs.36,000/- per month and the respondent has taken steps to reunion, but the petitioner refused for reunion. In the meantime, the petitioner filed a petition for divorce in H.M.O.P.No.347 of 2019 on the file of the Family Court, Madurai and the same was dismissed as withdrawn. Thereafter, the respondent filed a petition before the Family Court, Madurai for divorce in H.M.O.P.No.1116 of 2019 and the same is pending. The petitioner has



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also some immovable properties and thereby, earning through the agricultural income. The respondent is unable to maintain herself and thereby, the respondent seeks maintenance from the petitioner for a sum of Rs.20,000/- per month.

ii.) The petitioner denied the allegations levelled against him and according to him, the respondent herself left the matrimonial home and she is a graduate and she is able to maintain herself, therefore she cannot claim maintenance. With the above pleadings, the Trial Court tried the matter. Before the Trial Court, on the side of the respondent herein, they examined P.W1 and marked Ex.P1 to Ex.P8. On the side of the petitioner herein, R.W.1 was examined and no documents were marked. The Trial Court after hearing both sides, has partly allowed the petition and directed the husband, who is the petitioner herein to pay a sum of Rs.5000/- per month towards maintenance and past maintenance to be paid within 8 months from the date of the order and the future maintenance has to be paid within 10 days of the every English calender month. Against the same, the husband filed a revision petition before the Principal District and Sessions Court, Srivilliputhur and the Sessions Court also confirmed the order passed by the learned Judicial Magistrate No.II, Sivakasi.

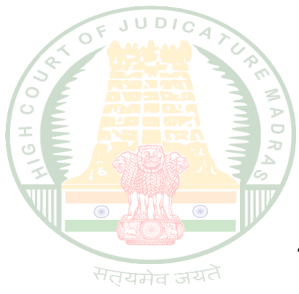


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Against which, the present petition has been filed.

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3. The learned counsel appearing for the petitioner would submit that the respondent is the legally wedded wife of the petitioner and their marriage took place on 19.01.2018. Thereafter, the respondents frequently made quarrel with the petitioner and his family members and she herself left the matrimonial home. In the meantime, the petitioner has also filed a petition for divorce and the same was withdrawn. Thereafter, the respondents filed a petition in H.M.O.P.No.1116 of 2019 and the same is pending. While so, the respondent has filed a petition before the Judicial Magistrate Court No.II, Sivakasi and the Trial Court without considering the real fact that the respondent is able to maintain herself, awarded a sum of Rs.5000/- per month towards maintenance. The order passed by the Trial Court is against law and the respondent herself able to maintain herself, but the Trial Court awarded the maintenance. Therefore, he challenged the said order through the revision petition before the Principal District and Session Court, Virudhunagar and the Sessions Court also without considering the real facts, simply dismissed the revision petition. Hence, the orders passed by the Courts below are liable to be set aside.

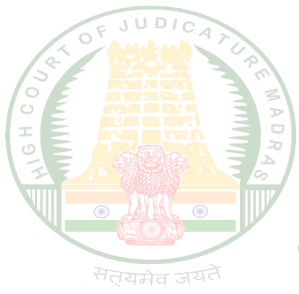


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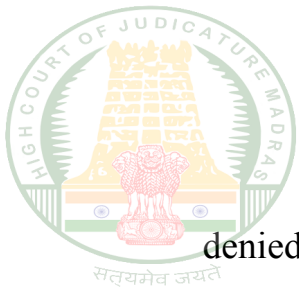
4. The learned counsel appearing for the respondent would submit that the petitioner being the husband failed to maintain the respondent. He is a Police Constable drawing a salary of Rs.45,000/- per month and the petitioner left the respondent to her parents house and thereafter, he refused to take back to the matrimonial home. The petitioner without any valid reasons refused to live with the respondent. Already the petitioner has filed H.M.O.P and the same was dismissed as withdrawn. Thereafter, the petitioner has also filed H.M.O.P.No.1116 of 2019 and the same is also pending before the Family Court, Madurai. Since the petitioner failed to maintain the respondent, she filed a petition under Section 125 of Code of Criminal Procedure (Cr.P.C), 1973 in M.C.No.27 of 2019 before the Judicial Magistrate No.II, Sivakasi. Thereafter, the learned Magistrate after considering the evidences adduced on both sides, awarded meager amount of Rs.5000/- per month and the same was challenged through the revision petition and the same was also dismissed. Therefore, the orders passed by the Courts below are reasonable and only to delay the proceedings, the present petition is filed.

5. Head both sides and perused the records.



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6. In this case, there is no dispute in respect of relationship of the parties and the petitioner is the husband of the respondent. The respondent is now residing with her parents and the same is also admitted. Already both the petitioner as well as the respondent filed petitions before the Family Court, Madurai. The petitioner had already withdrawn the petition which filed for divorce and the petition filed by the respondent for restitution of conjugal rights is still pending. In the meantime, the respondent filed a petition before the Judicial Magistrate Court No.II, Sivakasi for maintenance in M.C.No.27 of 2019. Before the Trial Court, on the side of the respondent herein, P.W.1 was examined and marked Ex.P1 to Ex.P8 and on the side of the petitioner / husband, R.W1 was examined and no documents were marked. The Trial Court, after considering the oral and documentary evidence, had allowed the petition in part and awarded Rs.5000/- per month towards maintenance to the respondent herein. The Trial Court passed an elaborate order after discussing the evidences. The P.W.1 in her evidence, has categorically stated that she is unable to maintain herself and the petitioner failed to maintain her and also stated that the petitioner is earning a sum of Rs. 45,000/- per month towards salary and he also earning a sum of Rs. 2,00,000/- from agricultural income. The petitioner/husband also not



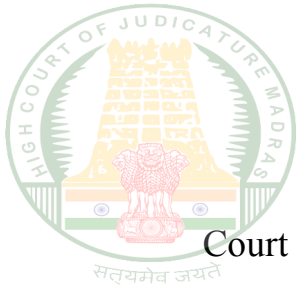
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denied his employment and according to him, he only drawing a salary Rs.

36,000/- per month. There is no dispute in respect of the relationship as husband and wife and the petitioner also salaried employee working in police department and he has been paying maintenance to her daughter, who born through the first marriage and the respondent also established that she is unable to maintain herself. It is an admitted fact that the respondent is residing with her parents and the Trial Court has awarded a reasonable amount of Rs.5000/- per month for maintenance. Therefore, the Revision Court also in the order had discussed about the evidences and rightly confirmed the order of the learned Magistrate by holding that the marriage between the parties is admitted and the respondent also residing with her parents and she also lodged a complaint before the police for reunion and the same was also closed. When the respondent herein is ready to live with the petitioner, he alone refused for reunion and the petitioner also earning a sum of Rs.36,000/- per month, by recording the reasons, the revision petition was dismissed.

7. This Court also perused the entire materials and the order passed by the Judicial Magistrate Court No.II, Sivakasi for a sum of Rs.5000/- per month towards maintenance is a reasonable amount and the Revision



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Court also, after an elaborate discussion by recording the reasons passed a reasoned order. Therefore, there is no illegality or irregularity in the orders passed by the Courts below and warrant no interfere. In view of the same, this petition has no merits and deserves to be dismissed. Accordingly, this Criminal Original Petition is dismissed and the order passed by the learned Judicial Magistrate No.II, Sivakasi in M.C.No.27 of 2019 dated 17.04.2023 and CrI.R.P.No.7 of 2023 dated 05.06.2024 on the file of the learned Principal District Court, Virudhunagar at Srivilliputhur are confirmed. Consequently, connected Criminal Miscellaneous Petition is closed.

25.04.2025

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

1. The Principal District Court, Virudhunagar at Srivilliputhur.
2. The Judicial Magistrate Court No.II, Sivakasi
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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P.DHANABAL, J.

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