



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Cr1.RC.No.8 of 2015
and M.P.No.1 of 2015

Sankar Ganesh

... Petitioner

vs.

K.Gayathri

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order dated 19.09.2014 in FCMC No.55 of 2014 passed by the learned Principal Judge, Family Court, Vellore, Vellore District.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.P.Jagadesan

JUDGMENT

On 07.01.2015, this Court directed Mr.E.Kannadasan, learned counsel for the petitioner to ascertain as to whether the order made in I.A.No.95 of 2012 in HMOP No.25 of 2012, dated 05.12.2013 on the file of the learned Sub Judge, Vellore District, directing the petitioner to pay maintenance, has been complied with and whether any periodical payment is being made. Reverting back, learned counsel for the petitioner submitted that the abovesaid order has not been complied with. No appeal has also been filed against the interim order made in I.A.No.95 of 2012. HMOP No.25 of 2012 has been filed by the petitioner for divorce. Learned counsel for the petitioner also submitted that in I.A.No.95 of 2012, a sum of Rs.5,000/- has been directed to be paid by way of interim maintenance till the disposal of HMOP No.25 of 2012.

2.In MC No.69 of 2011, renumbered as FCMC No.55 of 2014 on the file of learned Principal Judge, Family Court, Vellore, Vellore District, respondent has sought for maintenance of Rs.10,000/- and Rs.25,000/- for medical expenses. In addition to the above, Rs.5,000/- is sought for towards future maintenance of the child.

3. Perusal of the order made in FCMC No.55 of 2014, dated 19.09.2014 on the file of the learned Principal Judge, Family Court,



Vellore, Vellore District, shows that the respondent/wife has examined herself as PW1 and marked two documents. No witness has been examined on behalf of the petitioner/husband. No document has been filed. Finding that the petitioner has failed to maintain his wife and daughter, vide order dated 19.09.2014, the learned Family Judge, Vellore District, has directed the petitioner to pay maintenance of Rs.3,500/- per month from the date of institution of MC No.69 of 2011 on or before the 5th day of every English Calendar month. He has further directed a sum of Rs.2,000/- to be paid as maintenance from 01.12.2011. Medical expenses claimed has been declined. From the above, it is evident that pursuant to the order made in I.A.No.95 of 2012 in HMOP No.25 of 2012, dated 05.12.2013 on the file of the learned sub Judge, Vellore, the petitioner has not paid any amount to the wife and minor daughter, now aged about 3 years.

4.Material on record discloses that the petitioner is working as a Driver in Tamil Nadu State Transport Corporation, earning Rs.15,539/- per month, as per Ex.P.3-Salary Certificate. The only contention raised before this Court in this Revision is that there cannot be two orders, directing maintenance to the wife and child. However, Mr.P.Jagadeesan, learned counsel for the respondent submitted that order in I.A.No.95 of 2012 in HMOP No.25 of 2012 dated 05.12.2013 on the file of the learned Sub Judge, Vellore, can be made only during the pendency of HMOP filed for divorce, whereas MC.No.69 of 2011 has been filed for continuous payment of maintenance under Section 125 of CrPC. Such being the distinction, this Court is of the view that there is no illegality in the impugned order, directing maintenance, but, certainly the period directing maintenance is overlapping in both the proceedings. In MC No.69 of 2011, the direction to pay maintenance is from the date of institution i.e., 21.11.2011. In I.A.No.95 of 2012 in HMOP No.25 of 2012, dated 05.12.2013, the direction is to pay maintenance of Rs.5,000/- from 28.08.2012 and therefore, atleast from 28.08.2012, there cannot be two directions, for payment of maintenance. If both orders are allowed to operate, then the petitioner/husband would be greatly prejudiced.

5.While confirming the order made in FCMC No.55, dated 19.09.2014, for payment of maintenance to the wife and child, there shall be a slight modification of the order.

6.The petitioner is directed to pay the arrears of maintenance of Rs.12,95,000/- at the rate of Rs.3,500/- per month to the 1st respondent/wife, from the date of institution of MC No.69 of 2011, on or before 24.03.2015 from today. The petitioner is also directed to pay the arrears of maintenance of Rs.74,000/- at the rate of Rs.2,000/- per month to the child, now aged about three years, calculated from 01.12.2011, within the abovesaid period. The petitioner is further directed to pay 50% of arrears of maintenance



to his wife and child, on or before 09.02.2015, from today. The balance amount to be paid before 24.03.2015. The petitioner is directed to continue to pay monthly maintenance at the abovesaid rate, both the mother and the child, on or before the 5th day of English Calender month. It is made clear that in view of the order made in this Revision Petition, the respondents would not enforce the order made in I.A.No.95 of 2012 in HMOP No.25 of 2012, dated 05.12.2013, on the file of the learned Sub Judge, Vellore District.

With the above directions, this Criminal Revision Case is disposed of.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

mps

To

The Principal Judge,
Family Court, Vellore,
Vellore District.

+1cc to M/S E.Kannadasan Advocate Sr.3736
+1cc to M/S P.Jagadesan Advocate Sr.3634

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CNR (CO)
rvr 23/02/2015