

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-06-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1188 of 2009
and
M.P.No.1 of 2009

Syed Habeeb

... Petitioner

Versus

Fathimunissa

... Respondent

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order passed by the learned District Munsif-cum-Judicial Magistrate, Arcot, in M.C.No.11 of 2008, dated 11.09.2009.

For Petitioner : No Appearance

For Respondent : Mr.S.Thirunavukkarasu

ORDER

This Criminal Revision Case is filed by the petitioner/husband questioning the correctness of the quantum of maintenance ordered by the learned District Munsif-cum-Judicial Magistrate, Arcot, in M.C.No.11 of 2008, by order dated 11.09.2009. By the said order, the Court below has directed the petitioner/husband to pay a sum of Rs.3,000/- per month to the respondent/wife as against her claim of Rs.7,000/- per month towards maintenance from the date of the petition.

2. On 15.06.2015, when the matter was taken up, there was no representation for the petitioner and the matter is directed to be posted next week under the caption, "for dismissal". On 23.06.2015, when the matter was called, again there was no representation for the petitioner and hence, the matter was directed to be posted under the caption, "for dismissal" on 29.06.2015. Even today, when the matter is taken up, learned counsel appearing for the petitioner is not present, this kind of practice is deprecated by the Hon'ble Apex in the judgment reported in (2013) 3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka and it has culled out certain principles and in paragraph No.19 has held as follows:-

"19. From the aforesaid decision in Bani Singh vs. State of Uttar Pradesh, reported in (1996) 4 SCC 720, the

principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

In the light of the principles culled out in the judgment of the Hon'ble Apex Court cited supra, it is crystal clear that the Court can decide the matter even in the absence of petitioner or his counsel, but, only criteria is that the case should be decided on merits in the absence of the petitioner and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. In the light of the decision cited supra, as the case is pending from 2009 and the petitioner is successful in dragging on the case, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned counsel appearing for the respondent and also after perusing the materials available on record.

3. The only ground which has been raised by the petitioner/husband in the revision is that out of the legal wedlock, the petitioner and respondent have three sons, out of whom, two sons are earning a decent income and they are maintaining their mother/respondent and hence, the Lower Court has erred in granting maintenance at the rate of Rs.3,000/- per month.

4. Mr.S.Thirunavukkarasu, learned counsel appearing for the respondent/ wife would vehemently contend that the Lower Court has taken into consideration the entire evidence available on record and has rightly come to the conclusion and has granted maintenance at the rate of Rs.3,000/- per month and hence, he prayed for the dismissal of this Criminal Revision Case.

5. It is needless to point out that the Lower Court taking into consideration of the fact that the revision petitioner/husband in his evidence has categorically stated that he has admitted his third

son in a college by spending a sum of Rs.45,000/-, after which, he did not know anything about the studies of his children and also the averment of the respondent/wife that she has no means to look after herself, to controvert it, the husband is not able to produce any document to show that the wife has got any separate income to maintain herself, has rightly granted maintenance at the rate of Rs.3000/- per month. Hence, I do not find any reason to interfere with the reasoned order passed by the Lower Court.

6. For the foregoing discussions held, this Criminal Revision Case is dismissed and the order passed by the learned District Munsif-cum-Judicial Magistrate, Arcot, in M.C.No.11 of 2008, dated 11.09.2009, stands confirmed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

paa

To

The District Munsif-cum-Judicial Magistrate,
Arcot.

+1cc to Mr.S.Thirunavukarasu, Advocate, S.R.No.32475

Crl.R.C. No. 1188 of 2009
and
M.P.No.1 of 2009

NM(CO)
CA(10/07/2015)

सत्यमेव जयते

WEB COPY