

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl. Revision Case No. 1326 of 2013  
& M.P.No.1 of 2013

Mannivannan

.. Petitioner/Respondent

Versus

Sindamani

.. Respondent/Petitioner

Criminal Revision Case filed under Section 397 read with Sec. 401 of Cr.P.C. against the order dated 16.05.2013 made in Crl.M.P.No.182 of 2012 passed in M.C.No. 74 of 2010 on the file of the Family Court, Pondicherry.

For Petitioner : Mr. N.S.Sivakumar

For Respondent : Ms. P.V.Rajeswari

ORDER

This Criminal Revision Case is filed by the petitioner/husband against the dismissal order passed in Crl.M.P.No.182 of 2012. The said petition was filed by him to cancel the order passed in M.C.No.74 of 2010 on the file of the Family Court, Pondicherry.

2. In and by the said order, the Court below had dismissed the petition filed by the husband holding that the petitioner was present at the time of hearing the M.C.No.74 of 2010 and there is no need to interfere with the said order.

3. Mr.N.S.Sivakumar, learned counsel appearing for the petitioner vehemently contended that the petitioner/husband is a paralysis attack patient and he will not be able to serve himself. Further, he would also contend that the petitioner had filed a petition for restitution of conjugal right and the same was ordered on 30.01.2015 and hence, the question of payment of maintenance is illegal. It is also contended that the

petitioner had accepted to pay maintenance not on his own willingness but due to fear.

4. Per contra, learned counsel for the respondent would contend that the petition for restitution of conjugal rights is only an ex-parte order and steps have been taken to set aside the same. Further he has stated that the petitioner had paralysis attack much earlier and he has been employed as Mazdoor in PWD and getting his full salary from the Puducherry Government. Therefore, there is no question of unemployment and the wife has been mentally disturbed by the husband and now she is living separately because of the ill-treatment made by the petitioner as well as his parents.

5. With regard to the first contention put forth by the revision petitioner as to his inability to pay the maintenance as ordered by the Court below, it is seen that from the perusal of the Pay Slip it is proved that the petitioner is still employed and getting full salary therefore, the question of inability to pay does not arise at all.

(ii) Secondly, as rightly contended by the learned counsel for the revision petitioner when the petition filed for restitution of conjugal rights was allowed on 30.01.2015, the question of payment of maintenance will not arise at all.

(iii) Lastly, the revision petitioner was very much present before the court below at the time of ordering maintenance. After putting reasonable questions and with the acceptance of the petitioner, the Court below had ordered maintenance of Rs.5,000/- and hence, the stand taken by the petitioner that without knowing the court proceedings, he has accepted to pay the same will not hold good and has to be summarily rejected.

6. However, taking into consideration the pathetic situation of the petitioner that he has been suffering from paralysis attack and the totality of the circumstances, I am inclined to reduce the maintenance as ordered by the court below from Rs.5,000/- to Rs.4,000/-. It is also made clear that since the petition filed by the petitioner for restitution of conjugal rights has been allowed on 30.10.2015, the petitioner is directed to deposit the aforesaid maintenance amount from the date of petition till 30.01.2015, within a period of eight weeks, from the date of receipt of a copy of this order.

7. At this juncture, learned counsel for the petitioner represented that he had already deposited a sum of Rs.60,000/- and hence, the revision petitioner is directed to deposit the balance amount before the Court below. However, in view of the representation made by the learned counsel for the respondent,

the revision petitioner is directed to pay 50% of the maintenance as ordered now within a period of four weeks and the balance 50% within a period of four weeks thereafter.

This Criminal Revision Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Family Court, Pondicherry.

+1 cc to Mr.N.S.Sivakumar Advocate sr.55404

+1 cc to M/S.P.V.Rajeswari Advocate sr.54911

Crl.R.C. No. 1326 of 2013

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