

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 897 of 2008

Arumugham

.. Petitioner

Versus

Arthanareeswaran

.. Respondent

Revision Petition filed under Sections 397 read with Sec. 401 of Cr.P.C. praying to set aside the order dated 16.02.2008 made in M.C. No. 9 of 2006 on the file of the Judicial Magistrate No.2, Sankari.

For Petitioner : Mr. C. Kulanthaivel

For Respondent : Mr. S. Kalyanaraman

ORDER

The revision petitioner is the father and the respondent is his son. The revision petitioner has filed M.C. No. 9 of 2006 before the trial Court praying to direct the respondent to pay him a sum of Rs.3,000/- per month towards maintenance. The said Maintenance Case was dismissed by the Court below on the ground that the revision petitioner is in resourceful enough to maintain himself and therefore, the direction as sought for cannot be granted. Aggrieved against the order dated 16.02.2008 of the court below, the present Criminal Revision Case is filed.

2. According to the revision petitioner, he had three sons and all of them were given in marriage. The respondent herein is employed as an Assistant in T.C.M.S. Firm in Tiruchengode, his second son Mohan died and his third son is working as a daily wage employee. It is further stated that the revision petitioner and his wife Ramayee are residing alone and he was earning money as a hair dresser. However, one year prior to the institution of the Maintenance Case, he met with an accident in which he sustained fracture injuries and therefore he could not engage himself in any avocation. In such circumstances, the revision petitioner requested the respondent herein to help him financially or to maintain himself and his wife. Even though the respondent is resourceful enough to maintain the revision petitioner, he failed and neglected to do so, hence, the maintenance case was filed.

3. The respondent countered the maintenance case by stating that the revision petitioner is the owner of a private bus bearing Registration No. TN 39 D 5059 and he had recently sold the bus for a sum of Rs.7,00,000/- and deposited the sale proceeds in to his bank account. The revision petitioner is also the owner of two housing plots in his name where he had put up construction and presently residing there. Even though the revision petitioner is resourceful enough to maintain him, he engaged himself in his hair dressing business. It is also contended that for the injuries sustained by the revision petitioner, he has filed a Claim Petition before the Motor Accident Tribunal concerned in which he is likely to get sufficient amount as compensation. On the other hand, the respondent is in receipt of Rs.4,000/- as salary out of which he has to repay the housing loan amount to Life Insurance Corporation of India to the tune of Rs.2,000/- per month. In any event, the present Maintenance Case ought to have been filed against the other son namely Mohan, but it was only filed only against him and therefore the Maintenance Case itself is not maintainable. It is further stated that the son of the respondent is a mentally retarded child and he is spending lot of amount towards his treatment by borrowing amount. Lastly, it is submitted that even though the revision petitioner has filed the maintenance case, till date, as a loyal son, he is rendering all sort of assistance to his father and his father also used to visit his house. Thus, there is no love lost between the father and son, while so, issuing direction to the respondent to pay maintenance to his father/revision petitioner is not warranted and he prayed for dismissal of the Maintenance Case.

4. I have heard the learned counsel for the revision petitioner as well as the learned counsel for the respondent. The learned counsel for the revision petitioner would contend that as a son, the respondent is duty bound to maintain the revision petitioner, being his father. The petitioner is not in possession of sufficient wealth, as has been pointed out by the trial Court. On the contrary, the learned counsel for the respondent would contend that there is no love lost between the father and son and they are in good terms even as on date. It is also stated that the respondent has to maintain his mentally retarded son for which he has to spend substantial amount for purchase of medicine etc., When it is established before the Court below that the revision petitioner/father is resourceful enough to maintain himself, the trial Court is right in dismissing the application for maintenance and he prayed for dismissal of the Criminal Revision Case.

5. It is seen from the records that even at the time of filing M.C. No. 9 of 2006 before the trial Court, the revision petitioner was 62 years old and now he is 71 years old. The employment of the respondent in a private firm is not disputed. It is also admitted that the revision petitioner sustained injuries in a road accident and he has filed a claim petition seeking compensation before the Motor Accident Tribunal. By reason of such accident, the revision

petitioner could not engage himself in any avocation at this age. In such circumstances, the duty of the respondent to maintain his father is not only legal but also moral. Therefore, even assuming that the revision petitioner has some bank deposits, it is the duty of the respondent to maintain his father. Therefore, I hold that the revision petitioner is entitled for maintenance atleast at the rate of Rs.2,000/- per month, which in my view will be a fair, adequate and reasonable amount taking in to account the present market trend and life index. As reagrds arrears amount from the date of filing of M.C. No. 9 of 2006, I direct the respondent to pay a lumpsum amount of Rs.1,00,000/- directly to the revision petitioner within a period of six weeks from the date of receipt of a copy of this order, failing which, the respondent has to pay a sum of Rs.2,000/- per month as maintenance from the date of filing of M.C. No. 9 of 2006 till the date of payment.

6. In the result, the Criminal Revision Case is allowed to the extent indicated above.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rsh
To

The Judicial Magistrate No.2
Sankari.

+1 cc to Mr.C.Kulanthaivel, Advocate sr.34534/15

+1 cc to Mr.S.Kalyanairaman, Advocate sr.34458/15

Cr1 RC No. 897 of 2008

WEB COPY

aa07/08/2015