

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal Revision Case No.796 of 2014
and
M.P.No.1 of 2014

M.Neelakandan

... Petitioner
(Respondent)

Versus

1.Subapriya

2.Minor Rohit
rep.by his mother Subapriya

... Respondents
(Petitioners)

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure praying to set aside the order dated 25.09.2013 in MC No.1 of 2013 on the file of the Principal Subordinate Judge at Erode.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.S.Subbiah

O R D E R

By order dated 25.9.2013 passed in M.C.No.1 2013, the Court below directed the petitioner to pay a sum of Rs.40,000/- to the first respondent and Rs.60,000/- to the second respondent as maintenance every month, and to pay the arrears of maintenance from the date of filing of the Maintenance Petition till the date of order and cost of Rs.10,000/- within three months. As against the same, the petitioner has come forward with this Criminal Revision Petition.

2. Learned counsel for the petitioner would submit that when the first respondent voluntarily deserted the petitioner and left the matrimonial home, the court below is not correct in ordering maintenance of a sum of Rs.1,00,000/- per month to the respondents together. The learned counsel would further submit that the first respondent is living with her father and she has got her own income and a sum of Rs.25,000/- per month will be enough to live in Tamil

Nadu comfortably. The Court below ordered such an exorbitant amount as maintenance on the basis of surmises and conjectures. The learned counsel would further submit that the petitioner has to shell out 42% of his income towards income tax at United Kingdom and after deducting such tax, he would receive the remaining amount as salary. In the above circumstances, petitioner would contend that the amount fixed by the lower Court towards maintenance is very high and not correct.

3. Learned counsel for the respondents would submit that the petitioner is working in U.K. and he is earning sufficient money. It is his responsibility to take care of the respondents and the child needs to be given good education. Accordingly, he would submit that if any higher amount is paid by the petitioner, that will be beneficial for the respondents.

4. I have heard both sides and perused the records. As rightly pointed out by the learned counsel for the revision petitioner, the petitioner has to shell out 42% of his earning as tax in U.K., Even though the petitioner is prepared to pay a sum of Rs.25,000/- per month for both the respondents towards maintenance, it is unacceptable as the child should be given good education. It is also brought to the notice of this Court by the learned counsel for the petitioner that already FCOP No. 133 of 2011 was filed by the petitioner seeking Divorce and the same was also granted by the Family Court, Salem dissolving the marriage solemnised between the petitioner and the first respondent. Therefore, at this stage, grant of maintenance itself will not arise. It is also brought to the notice of this Court that as against the order granting a decree of divorce in FCOP No. 133 of 2011, the first respondent has already filed an Appeal before the appellate Court and the same is pending.

5. Considering the facts and circumstances of the case, and to meet the ends of justice, the petitioner/husband is directed to pay a sum of Rs.20,000/- (Rupees twenty thousand only) to the first respondent/wife and Rs.40,000/- (Rupees forty thousand only) to the second respondent/child every month, on or before the 05th of every succeeding English calendar month, from the month of July, 2015 onwards, and arrears of maintenance shall be calculated and paid from the date of filing of the maintenance petition till the date of this order within a period of four months from the date of receipt of a copy of this order.

6. As regards the contention of the counsel for the petitioner that already a decree of divorce was granted in favour of the revision petitioner, the consequences of grant of such decree of divorce will not be a deterrent to pass an order in the Maintenance case. The parties are also at liberty to agitate the matter in so far as the grant of divorce is concerned at the time of hearing in the appeal. As far as the present Criminal Revision Case is

concerned, even before filing of the Civil Miscellaneous Appeal before the learned Principal District Judge, Erode, the present Criminal Revision Case has been filed and it is taken up for hearing today. Therefore, it is left open to the parties to agitate their right, if any, on the basis of the decree of divorce granted in favour of the revision Petitioner in the Civil Miscellaneous Appeal filed by the respondent in respect of future maintenance also.

7. With the above modification, this criminal revision case is partly allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

asvm/rsh

To

The Principal Subordinate Judge
Erode.

+lcc to Mr.V.Raghavachari, Advocate, S.R.No.84091

+lcc to Mr.S.Subbiah, Advocate, S.R.No.34474

Crl.R.C. No.796 of 2014
and
M.P.No.1 of 2014

CTK(CO)
CA(02/09/2015)

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