



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2015

CORAM:

THE HONOURABLE MRS.JUSTICE S.VIMALA

WEB COPY

Criminal Revision Case (MD)No.402 of 2015

and

M.P.(MD)No.1 of 2015

M.Rajesh

.. Petitioner/Respondent

Vs.

1.Thangam

2.Minor.Charan Jit Vignesh

.. Respondents/Petitioners

Revision is filed under Section 397 r/w 401 Cr.P.C. against the order dated 24.11.214 passed in M.C.No.27 of 2014 by the Family Court, Tirunelveli.

For Petitioner : Mr.Y.Prakash

For Respondents : Mr.R.Pon Karthikeyan

ORDER

The wife and child each was awarded maintenance at Rs.5,000/- p.m. Aggrieved over the order, the husband has filed this revision petition.

2.Initially, the wife and minor child of the revision petitioner filed an application for maintenance in M.C.No.50 of 2013 before the learned Chief Judicial Magistrate, Tirunelveli. The husband disputed the claim of maintenance on the ground that the wife is employed and she is capable of maintaining herself and therefore, it is not necessary for him to pay any maintenance. Yet another defence is that he has filed a divorce petition before the Family Court, Tirunelveli in O.P.No.174 of 2014 and ultimately divorce has been granted. The Court after going through the oral and documentary evidence, has chosen to award a sum of Rs.5,000/- to each of them.

3.While considering the case of the respondent, observation is that there is no proof to show that the wife is employed in Infant Jesus Engineering College, as contended by the husband and therefore, it is the duty of the husband to pay maintenance. The financial status of the husband has also been considered. Even according to the admission of the husband, he is employed in TATA communications and his carry home salary is Rs.30,000/-. The suggestion to husband is that he is earning a sum of Rs.50,000/-. Only after considering ability of the husband, the quantum of maintenance has been fixed by the Court below.

4. Now, the learned counsel for the revision petitioner submitted that since it was a private college, the husband was not able to prove that the wife is employed and therefore, that aspect should be considered.

5. Whether the contention of the husband that he is not able to produce documents showing the employment of the wife as it is a private college, is acceptable, is the issue to be considered?



6. All colleges whether private or public, are subjected to rule of law. If the husband really intended to file the proof of document, it may not have been difficult for the husband to have taken out an application under Section 91 Cr.P.C. calling for documents. That has not been done. In the absence of any proof to show that the wife is employed, the order of maintenance already awarded cannot be cancelled.

7. It is also open to the husband to move the application under Section 127 Cr.P.C. seeking modification of the order of maintenance, if there is any change in circumstances.

8. So far as the quantum of maintenance is concerned, going by the present day cost of living and cost of education and also taking note of the age of the minor child, the award of maintenance cannot be stated to be excessive. According to the husband, he is employed in TATA communications and that as suggested by the wife, he is not earning Rs.50,000/-, but only Rs.30,000/-. Nothing prevented the husband from producing the salary certificate. From the non production of the salary certificate, the Court draw adverse inference that if the salary certificate is produced that would be detrimental to the case of the husband and that is why, it is not produced. Therefore, it is clear that, the financial ability of the husband would not deter him from making this payment. Therefore, there are no grounds in the revision. Accordingly, the revision is liable to be dismissed.

9. In the result, the Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Judge, Family Court, Tirunelveli.

+1cc to Mr.R.Pon Karthikeyan, Advocate SR.No.81982

Cr1.R.C. (MD) No.402 of 2015
04.09.2015

rj2

NS/GJB-DP/30.09.2015 : 2P/3C