

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2016

(Orders Reserved on : 19.07.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Cr1.R.C.No.1264 of 2015

and

M.P.No.1 of 2015

Velmurugan

... Petitioner

Vs.

1. Kavitha

2. Minor Priya

3. Minor Durga

... Respondents

Prayer: Criminal Revision Case filed under Section 397 r/w.401 of the Code of Criminal Procedure, against the order dated 30.10.2015 passed by the learned Judicial Magistrate No.I, Attur, in M.C.No.9 of 2014.

For Petitioner : Mr.T.Murugamanickam

For Respondents : Mr.G.Arulmurugan

ORDER

This Criminal Revision Case is directed against the order dated 30.10.2015 passed by the learned Judicial Magistrate No.I, Attur, in M.C.No.9 of 2014.

2. The brief facts of the case are as follows:-

The respondents herein have filed a maintenance case in M.C.No.9 of 2014 under Section 125 of Cr.P.C. before the learned Judicial Magistrate No.I, Attur, against the revision petitioner herein claiming maintenance of Rs.10,000/- to the first respondent herein and Rs.5,000/- each to the second and third respondents herein. The learned Judicial Magistrate No.I, Attur, after analyzing the evidence and the documents produced by both sides, allowed the said petition and directed the revision petitioner herein/husband to pay a sum of Rs.5,000/- to the first respondent herein/wife and Rs.2,500/- each to the second and third respondents herein, totally

Rs.10,000/- per month towards maintenance to the respondents herein and directed the husband to pay the maintenance amount from the date of petition on or before 5th of every Month and also directed the revision petitioner/husband to pay the maintenance amount to the minor respondents 2 and 3 till their marriage. As against the said order passed by the learned Judicial Magistrate No.I, Attur, the present criminal revision case is preferred by the revision petitioner/husband.

3. The learned counsel for the petitioner would mainly contend that the trial Court ought to have dismissed the petition filed under Section 125 of Cr.P.C. as not maintainable on the sole ground that a similar application for grant of maintenance i.e., I.A.No.12 of 2013 in H.M.O.P.No.35 of 2006 filed by the respondents is pending before the learned Subordinate Judge, Attur. Further, the trial Court ought to have seen that the first respondent herein has not proved the income of the revision petitioner. It is also contended by the learned counsel for the petitioner that the trial Court ought to have seen that the first respondent herein has possessed of immovable properties as a co-sharer along with her father. Hence, the learned counsel for the petitioner prayed that the order passed by the trial Court has to be set aside and this criminal revision case has to be allowed.

4. The learned counsel appearing for the respondents would contend that even though the respondents have filed an application in I.A.No.12 of 2013 in H.M.O.P.No.35 of 2006 before the learned Subordinate Judge, Attur, it is not a bar for filing the petition under Section 125 of Cr.P.C. It is further submitted that the petitioner has not produced any documents to show that the first respondent herein/wife has joint family property along with her father. The learned counsel for the respondents also submitted that the learned trial Judge, after considering the entire facts and circumstances of the case, correctly passed an order allowing the maintenance petition filed by the respondents herein and granting maintenance to them and therefore, there is no infirmity or illegality in the order passed by the learned trial Judge and hence, the learned counsel prayed that the criminal revision case has to be dismissed.

5. This Court has considered the submissions made by the learned counsel on either side and perused the entire records.

6. In this case, admittedly, the application in I.A.No.12 of 2013 in H.M.O.P.No.35 of 2006 filed by the respondents herein is pending before the learned Subordinate Judge, Attur. As per the Hindu Marriage Act, even though an application seeking interim maintenance was filed in I.A.No.12 of 2013 in H.M.O.P.No.35 of 2006, legally, there is no bar for the respondents to file a petition under Section 125 of Cr.P.C. In view of the above, the argument of the learned counsel for the petitioner that since the respondents herein

have already filed an application for interim maintenance, the petition filed by them under Section 125 of Cr.P.C. is not maintainable has to be rejected.

7. Further, the second argument on the side of the revision petitioner is that the first respondent herein/wife has not proved the income of the revision petitioner and the petitioner is only a coolie worker and he is not able to pay interim maintenance to the respondents herein. On a perusal of records, it is seen that on 17.02.2014, the father of the revision petitioner has executed a Settlement Deed in favour of the revision petitioner which was marked as Ex.A.9 and subsequently, it was canceled on 17.03.2014 and the said document was marked as Ex.A.8. Since the revision petitioner is a coolie worker, he is not able to pay the maintenance to the respondents is not a reason for rejecting the maintenance awarded by the trial Court to the respondents herein. Hence, the argument of the learned counsel for the petitioner that since the petitioner is a coolie worker, he is not able to pay the maintenance is liable to be rejected. The revision petitioner has bounden duty to maintain his wife and his daughters and therefore, he has to pay maintenance to them. Hence, the argument of the learned counsel for the petitioner that since the revision petitioner is working as a coolie worker, he is not able to pay maintenance of Rs.10,000/- per month to the respondents and hence, the petition filed by the respondents herein under Section 125 of Cr.P.C. has to be dismissed is not at all acceptable and the said argument is liable to be rejected.

8. In view of the above facts and circumstances of the case, the amount of Rs.10,000/- awarded by the learned Judicial Magistrate No.I, Attur, towards maintenance to the respondents herein is appropriate one and in any way, it cannot be claimed as excessive. There is no infirmity or illegality in the order passed by the learned Judicial Magistrate No.I, Attur. This Court finds no reason to interfere with the order of the learned trial Judge and hence, the criminal revision case is liable to be dismissed.

9. In the result, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Jr1

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Sd/-

Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To

The Judicial Magistrate No.I,
Attur.

Order in
Cr1.R.C.No.1264 of 2015

ALA[CO]

MK:28/12/2016



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