

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.811 of 2016  
and  
Crl.M.P.No.6074 of 2016

C.Rajendra Raj

.. Petitioner

Vs.

1.Mrs.N.Amudha

2.Cathrin Nikitha

3.R.Kevin Dass

.. Respondents

Criminal Revision filed under Section 397 and 401 Cr.P.C. praying to set aside the order dated 18.02.2016 passed in M.C.No.484 of 2012 on the file of III Additional Family Court at Chennai.

For Petitioner : Mr.Prem Rajkumar  
For Respondent : Mr.V.Lakshminarayanan

\*\*\*\*\*

O R D E R

Petitioner challenges the order of learned Judge, III Additional Family Court, Chennai, passed in M.C.No.484 of 2012 on 18.02.2016.

2. Maintenance case in M.C.No.484 of 2012 on the file of learned Judge, III Additional Family Court, Chennai, was moved by first respondent/wife and two minor children represented by their mother seeking maintenance in a sum of Rs.15,000/- each per month and in all a sum of Rs.45,000/- p.m. Petitioner herein contested the said case. First respondent herein was examined as P.W.1 and Exs.1 to 11 were marked. Petitioner herein was examined as R.W.1 and Exs.1 to 6 were marked. On considering all evidence on record, Court below directed petitioner herein to pay a sum of Rs. 5,000/- per month to each of the respondents and in all a sum of Rs.15,000/-, payable on or before 5th of every English Calender month. Challenging such order, petitioner has moved present revision petition.

3. Admitted facts are as follows:

(i) First respondent married Dr.R.Dharmanathan on 5.2.1995, who was a Government employee and he died in a road accident on 26.07.1996. First respondent was then pregnant. On 08.03.1997, a girl child by name Kirthana was born. Similarly, petitioner married one Ajitha Mary @ Aji on 12.05.1997 and out of said wedlock a boy child was born on 18.08.1999. The said marriage was dissolved on 31.07.2001 by virtue of order passed by II Additional Family Court, Chennai in F.C.O.P.No.396 of 2001. Thereafter, petitioner and respondent were married on 28.01.2002 as per Hindu rites and customs and the same was registered on the file of the Sub-Registrar, Verkilambi, as Document No.6 of 2002. Out of said wedlock, a girl child by name R.Cathrin Nikitha was born on 01.12.2002 studying in 5th Standard. A boy child by name R.Kevin Dass was born on 12.10.2006. The children are under the care and custody of first respondent.

(ii) Before the Court below, petitioner contended that first respondent is in possession of property, which yields rental income of Rs.30,000/- per month. Petitioner purchased such premise from his salary and for construction of complex, he obtained loan. Hence, he draws only Rs.9,456/- per month. First respondent is enjoying such complex. Thus, she is not entitled to claim maintenance from petitioner.

(iii) On appreciation of rival contentions, Court below, took note of Exs.R.2 to R.5 and held that Exs.R.2 to R.5 reveal the fact of borrowings pertaining to 2014-2015 whereas the parties are living separately from 04.04.2012. Further, Court below found that take home salary of petitioner would be Rs.24,625/-.

4. Learned counsel for petitioner submitted that petitioner having allowed respondents to enjoy rental income of complex at Rs.30,000/- p.m., the requirement of petitioner effecting payment in a sum of Rs.15,000/- p.m. towards maintenance is not justified. Further, it is submitted that take home salary of petitioner is only a meagre amount of Rs.5,679/- per month.

5. Learned counsel for respondents submitted that property, which comprised complex has been purchased on 03.05.2004, out of the monies received as compensation towards the death of first respondent's husband. Learned counsel for respondents submitted that Sale deed in favour of first respondent had been registered only on 03.5.2004 after receipt of all monies payable to the first respondent on the death of her first husband. Further, first respondent is entitled to maintenance to take care of herself and her two minor children, who are now in college and school. Learned counsel for respondents further submitted that as against the claim of Rs.45,000/-, the Court below awarded only a sum of Rs.5,000/- per month each by

correctly pointing out take home salary of petitioner at Rs.24,625/-. The finding arrived at by the Court below is just and proper and the sum awarded as maintenance is a reasonable and justifiable one.

6. This Court considered rival submissions made by learned counsel on either side.

7. Considering the facts and circumstances of the case, this Court is of the view that mere receiving rental income from a complex would not justify denial of maintenance to first respondent. A husband is upon duty to maintain the wife and children at the standard they are used to. Litigation regards the 'complex' property is on between the parties. This Court is of the view that a fair and balanced approach has been adopted by Court below.

8. In the result, the criminal revision petition is dismissed. Consequently, connected miscellaneous petition is closed. However, considering the submissions made on either side, the Court below dealing with the civil suit between the parties may dispose of the same as expeditiously as possible.

s/d-  
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

To

1. The III Additional Family Court Judge,  
Chennai.

+1 CC to Mr. S. Premraj Kumar, Advocate sr 62540  
+3 CC to Mr. M.A.R. Prakash, Advocate sr 63216

WEB COPY

Cr1.R.C.No.811 of 2016

sp/1/2