

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07 -09-2016

(Orders reserved on 20.07.2016)

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

CrI.R.C.No.882 of 2016

And

CrI.M.P.No. 6742 of 2016

S.Azhagia Nambi

... Petitioner

Vs

Sri Devi

... Respondent

PRAYER : Criminal Revision case filed under Section 397 read with Section 401 of Cr.P.C., to set aside the order dated 16.11.2015 passed in C.M.P.No. 5386 of 2015 in M.C.No. 4 of 2015 on the file of the Judicial Magistrate No.II, Poonamallee.

For Petitioner : Mr. A.Prabakaran

For Respondent : Mr. P.K.Sabapathi

O R D E R

The Criminal Revision Case is directed against order passed by the learned Judicial Magistrate No.II, Poonamallee, made in C.M.P.No. 5386 of

2015 in M.C.No. 4 of 2015 dated 16.11.2015.

2 . It is admitted by both sides that the revision petitioner is the husband of the respondent/wife.

3 . The learned counsel for the revision petitioner-husband mainly contended that the learned Judicial Magistrate No.II has failed to consider the point that the respondent is working in Anand Institute of Higher Technology, Kalas Lingam Nagar, Old Mahabalipuram Road, Kazhipattu - 603 103 and is having sufficient means for maintaining herself and her family member. The learned Judicial Magistrate No.II, has failed to consider the material evidence filed by the revision petitioner-husband and erroneously awarded interim maintenance at Rs.6,000/- per month by the revision petitioner-husband to the respondent-wife. Hence, the order of the learned Judicial Magistrate No.II, Ponnammalle is liable to be set aside. Further, the trial Court has failed to consider the admission of the respondent that the revision petitioner-husband has returned 30 sovereigns of gold jewels and inspite of the same, the trial Court erroneously directed the revision petitioner-husband to pay Rs.6,000/- per month

to the respondent-wife. Hence, the learned counsel prays for allowing the Criminal Revision Case by setting aside the order of the trial Court.

4. The learned counsel for the respondent-wife mainly contended that the trial Court, after analyzing the entire facts and circumstances of the case, passed an appropriate order and there is no illegality or infirmity in the order of the trial Court. Hence, he prays for dismissal of the Criminal Revision Case by confirming the order of the trial Court.

5. In this case, the main argument put-forth on the side of the revision petitioner-husband is that the respondent-wife is working in Anand Institute of Higher Technology, Kalas Lingam Nagar, Old Mahabalipuram Road, Kazhipattu - 603 103 and she is having sufficient means for maintaining herself and her family member. Hence, the revision petitioner-husband has proved that the respondent-wife is having sufficient means to maintain herself. On the side of the respondent-wife, there is no oral or documentary evidence to prove her case, whereas, the revision petitioner-husband has marked Exs. A-1 to A-3.

6. On a perusal of the documents on the side of the revision petitioner-husband, it is seen that under Ex.P-1, the respondent-wife herself is

maintaining her son, educational expenses and necessary expenses. Further, as per Ex.A-2, the respondent-wife has pledged her jewels. But these documents have not been denied by the respondent-wife.

7 . On a perusal of the materials available on record, it is seen that the revision petitioner-husband received monthly income of Rs.38,085/- and during the year August 2015, his gross salary was Rs.44,201 and after deduction of Rs.4,737/-, he received monthly income of Rs.39,464/-. Further, he admitted that he is repaying some loans already borrowed.

8 . From the above facts, it is seen that the petitioner-husband was earning monthly gross income of Rs.44,201/- and after deduction, he was earning Rs.39,464/- during the year August 2015. Since the petitioner-husband is earning such income, he is liable to maintain his wife (respondent) and son and the trial Court after marking the documents Exs.A-1 to A-3, directed the revision petitioner-husband to pay interim maintenance at Rs.6,000/- per month, which is a reasonable amount, which cannot, at any rate, be termed as excessive. Further, the revision petitioner-husband has not proved that the respondent-wife is earning and has sufficient means to maintain herself and her

son.

9 . In view of the above facts and circumstances, this Court finds that the order of the trial Court directing the revision petitioner-husband to pay Rs.6,000/- as interim maintenance, is legally sustainable and this Court finds no illegality or infirmity in the order passed by the learned Judicial Magistrate No.II, Poonamallee and the same does not warrant any interference by this Court.

10. In the result, the Criminal Revision Case stands dismissed. Consequently, connected Miscellaneous Petition is closed.

07.09.2016.

Index:Yes/No
Internet:Yes/No

vsg

To

The Judicial Magistrate No.II, Poonamallee.

G.CHOCKALINGAM, J.

vsg

Pre- delivery order in

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