

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.03.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

Criminal Revision Case Nos.433 of 2013 and 269 of 2016
and
M.P.No.1 of 2013

B.Yogeswaran @ Yuvaraj ... Petitioner in
Crl.R.C.433 of 2013/
... Respondent in
Crl.R.C.269 of 2016

vs.

Y.Kanchana ... Respondent in
Crl.R.C.433 of 2013/
... Petitioner in
Crl.R.C.269 of 2016

Criminal Revisions filed under section 397 read with 401 of Criminal Procedure Code, 1973 against the order dated 25.09.2012 made in M.C.No.441 of 2004 on the file of the II Additional Principal Judge, I/C III Additional Family Court, Chennai.

For Petitioner in
Crl.R.C.433 of 2013/
Respondent in
Crl.R.C.269 of 2016 : M/s.S.Thamizharasi

For Respondent in
Crl.R.C.433 of 2013/
Petitioner in
Crl.R.C.269 of 2016 : M/s.A.Sumathy

COMMON ORDER

The wife and husband are embroiled in a close contest in a maintenance case in M.C.No.441 of 2004.

2. The wife asked for Rs.5,000/- as monthly maintenance under Section 125(1) Cr.P.C. The husband opposed it. Ultimately, the wife won partially as she was granted Rs.3,000/- per month from the date of filing of the maintenance petition.

3. Aggrieved, the husband filed Crl.R.C.No.433 of 2013 as against grant of maintenance to his wife. While the wife filed Crl.R.C.No.269 of 2016 as against not granting her Rs.5,000/- as prayed for.

4. In this regard, the learned counsels have presented their point of view. Now we have to give our (Court's) point of view in consideration of their arguments, impugned order and the materials on record.

5. The crux of the matter is whether the husband, in spite of having his means, failed and neglected to maintain his wife, who is unable to maintain herself. But, at the same time, the capacity of husband to pay maintenance also to be considered.

6. The Courts adopted a pragmatic approach while interpreting 'capacity to pay' as 'ability to earn'. One may have ability to earn, but have no interest to earn. An husband may have ability to earn, but to avoid paying maintenance to his wife, may not be interested to earn. In this case, the revision petitioner is doing some workshop business. He has ability to earn.

7. Admittedly, in this case there is no allegation that the wife is gainfully employed. Revision petitioner is legally and morally bound to maintain his wife. He cannot avoid his this responsibility.

8. Now the extent/quantum of maintenance merits consideration. The respondent / wife is living in Kancheepuram. The prices of even essential commodities are galloping because of inflation. Falling of price is a distant dream of every one. She must be provided with bare necessities of life, viz., roof, food, clothing and for her cosmetics.

9. In the present days, certainly Rs.3,000/- per month will be hand to mouth. It is stated that the husband is doing fabrication work in Erukkancherry. It is stated that the husband is afflicted with many diseases and he has to spend towards his medication. He has to take care of his diseases and he has also to take care of his wife. He cannot avoid both.

10. In the circumstances, we fix of Rs.3,800/- (Rupees three thousand and eight hundred only) per month towards her monthly maintenance.

11. Ordered as under:-

The impugned order of the learned III Additional Principal Judge, Family Court, Chennai, is modified to the effect that respondent shall be paid Rs.3,800/- (Rupees three thousand and eight hundred only) per month towards her maintenance from the date of her filing of the maintenance petition in M.C.No.441 of 2004. Accordingly, both the Criminal Revisions are disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The III Additional Principal Judge,
Family Court, Chennai.

+1cc to M/S.S.Thamizharasi, Advocate, S.R.No.17972

+1cc to M/S.A.Sumathy, Advocate, S.R.No.18183

Crl.R.C.Nos.433 of 2013 and 269 of 2016
and
M.P.No.1 of 2013

bvr (CO)

srg (05/04/2016)

WEB COPY