

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

CORAM

THE HON'BLE MR. JUSTICE **R.SURESH KUMAR**

Crl.R.C.No.1218 of 2017 and
Crl.M.P.No.11644 of 2017

Sivapriyan

... Petitioner

Vs.

Kalaiselvi

... Respondent

Prayer:- Criminal Revision Petition has been filed under Section 397 read with 401 Cr.P.C., to call for the entire records in connection with the F.C.M.C.No.158 of 2014 on the file of the learned Family Court, Vellore District and set aside the order dated 17.04.2017.

For Petitioner : Mr.E.Kannadasan

ORDER

This criminal revision case has been filed against the order dated 17.04.2017 passed by the learned Family Court, Vellore in F.C.M.C.No.158 of 2014. The petitioner has assailed the aforesaid order, whereby, the trial Court has directed the petitioner to pay a sum of Rs.6,000/- to the respondent as monthly maintenance.

2. Mr. E.Kannadasan, learned counsel appearing for the petitioner would submit that the respondent/wife voluntarily deserted the petitioner and in this regard, already proceedings were initiated by the petitioner to get divorce and those petitions are pending before the appropriate forum. Once that is decided, the obligation on the part of the petitioner to pay the maintenance would also be in question and therefore, if the present order is given to effect and if ultimately, the petitioner succeed in that proceedings, then these amount paid cannot be recovered.

3. This Court is not impressed with the said argument advanced by the learned counsel appearing for the petitioner. The petitioner is working in a government service, where he is getting a salary of Rs.30,000/- per month. Even after some deduction, the admitted take home salary of the petitioner is Rs.20,000/- per month. Considering these aspects only, the learned Judge has directed the petitioner to pay a sum of Rs.6,000/- per month towards maintenance. The said amount of Rs.6,000/- is lesser than $\frac{1}{3}$ rd amount of the actual take home salary as admitted by the petitioner. Whatever be the reason for filing petition for divorce may not have an influence on deciding the maintenance case and only based on the given facts and circumstances, of course, after

considering the paying capacity of the petitioner/husband as well as the circumstances where the respondent/wife is living and whether she is able to maintain herself or not, the maintenance order to be given.

4. In that context, after having gone through the order which is impugned herein and after considering the arguments advanced by the learned counsel appearing for the petitioner, this Court is of the view that there is no infirmity or impropriety attached with the said impugned order as the amount awarded as maintenance is quite reasonable as compared with the salary of the petitioner. Therefore, this Court feels that the present case is liable to be rejected.

5. However, insofar as the arrears of maintenance is concerned, in view of the request made by the learned counsel for the petitioner, to pay the same in installments, this Court permits the petitioner to pay the said arrears of maintenance, which according to him, is Rs.2,88,000/- as of now, in four equal monthly installments from October, 2017 onwards.

R.SURESH KUMAR, J.

rts

6. With these observations, the criminal revision case is dismissed. Consequently, connected miscellaneous petition is also closed.

14.09.2017

Speaking/non speaking order
Index :Yes/No

To

The Presiding Officer,
The Family Court,
Vellore District



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