

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.08.2017

Coram

The Hon'ble Mr. Justice R. SURESH KUMAR

CRL.RC.No.916 of 2017
and CRL.MP.No.8659 of 2017

G.Kuppusamy

...Petitioner

Vs.

1.K.Rama

2.K.Prathap

3.Minor K.Divakar

(Minor rep. by his Mother/Guardian Rama) ...Respondents

Criminal Revision Petition filed under Sections 397 read with 401 of the Code of Criminal Procedure, to set aside the order dated 30.05.2016 passed by the learned Principal Family Court, Coimbatore, in M.C.No.25 of 2014.

For Petitioner : Mr.L.Mouli

For Respondents : Mr.J.Kingsley Solomon

ORDER

This revision case has been filed against the order passed by the learned Principal Judge, Family Court, Coimbatore, in M.C.No.25 of 2014 dated 30.05.2016.

2.The 1st respondent/wife filed a case for maintenance under Section 125 of the Code of Criminal Procedure before the said Court in M.C.No.25 of 2014. After hearing both sides, and on considering the evidence adduced by the parties, the learned Judge has passed an order, directing the petitioner to pay maintenance of Rs.3,500/- per month to the 1st respondent/wife and Rs.1,500/- each per month to the second and third respondents/children and altogether a total sum of Rs.6,500/- per month. Feeling aggrieved over the said order, the present Revision has been filed.

3.Mr.L.Mouli, learned Counsel appearing for the petitioner would submit that insofar as the order of maintenance to the children i.e., the second and third respondents are concerned, the petitioner cannot have any grievance. However, insofar as the order of maintenance of Rs.3,500/- per month ordered to

be paid to the first respondent wife is concerned, the learned Counsel appearing for the petitioner would submit that the said order is liable to be interfered with.

4.The learned counsel appearing for the petitioner would invite the attention of this Court to Para 11 of the Judgment impugned, which reads thus:

"The petitioner contends that she was unable to maintain herself and had two sons who are studying and she obtained hand loan of Rs.16,000/- by pledging her jewels and struggling to maintain themselves. The respondent had denied the same by stating that the petitioner is an agent of Bajaj Alliance Insurance and also running Amman Tailors apart from recharging for cellphone and in proof of the same he had produced photographs were marked as Exs.R1 to R3. On perusal of Exs.R1 to R3, it shows the petitioner was carrying out tailoring works and the sign board carries Amman Tailors with the cellphone number of the petitioner.

Though the income of the petitioner through insurance agent and conducting tailoring training and recharging of cellphone was not proved by the respondent he had proved that the petitioner carried out tailoring work and thereby earning."

5.By quoting of the said Para of the impugned Judgment, the learned counsel would submit that even though the petitioner was able to prove that the first respondent wife was running a tailoring shop and out of which, she is getting regular earning and therefore, she is able to maintain herself, the learned Judge has not accepted the same and it has been held that the actual income from the said tailoring shop run by the first respondent wife has not been proved by the petitioner.

6.In this regard, the learned Counsel appearing for the petitioner would submit that Section 125 of the Code of Criminal Procedure envisages giving maintenance to the wife only if she is unable to maintain herself. Here, in the case on hand, since it has been proved that the first respondent wife is

having some respectful earning, out of which, she can very well maintain herself, the very order passed by the Court below, directing the petitioner to pay a sum of Rs.3,500/- per month by invoking Section 125 of the Code, is absolutely unjustifiable and therefore, on that scope, the order impugned is unsustainable.

7.Per Contra, Mr.J.Kingsley Solomon, learned Counsel appearing for the respondents would submit that the first respondent has been abruptly deserted by the petitioner and even when there is a subsisting relationship of Husband and Wife between the petitioner and the first respondent, the petitioner has married another woman unlawfully and out of the said wedlock, the petitioner has a female child.

8.In this regard, the learned Counsel appearing for the respondents would invite the attention of this Court to Para 12 of the impugned Judgment, wherein the learned Judge has considered the admission made by the petitioner before Court

which reads thus:

"The respondent contends that he is residing in rental premises for a monthly rent of Rs.3,000/- and paying Rs.500/- or his shed he is able to maintain himself Sangeetha and also paying Rs.15,000/- towards educational expense to his minor daughter Ilakia is also bound to maintain the petitioner and his two minor Sons as husband and father."

9.By citing the said discussion, the learned counsel appearing for the respondents would submit that admittedly, since the petitioner has been able to give Rs.15,000/- to his second wife and daughter and also spending a lot of money to run the said family, he is refusal to give a nominal amount to maintain the family of the legally wedded wife, is absolutely unjustifiable. Therefore, only on this aspect, the learned Judge has ordered the said maintenance.

10.I have considered the said submissions made by both sides and perused the materials placed before this Court.

11.As has been rightly pointed out by the learned Counsel appearing for the respondents, the petitioner, on his own admission, is spending a considerable amount towards his second wife and her family. However, the first wife, being a legally wedded wife and the relationship of husband and wife is still subsisting, she cannot be denied maintenance for her survival.

12.The first respondent, since is not having any support to stand on her own leg as their children i.e., the respondents 2 and 3 are minors, there is every justification to seek for maintenance to the first respondent as well as the children i.e., the second and third respondents.

13.Only considering all these aspects, the Court below has given a direction, directing the petitioner to give maintenance to all the respondents. As has been stated by the learned Counsel appearing for the petitioner, the petitioner cannot any objection with regard to the directions to give to the children i.e., the respondents 2 and 3. Even in respect of maintenance directed to be given to the first respondent i.e.,

Rs.3,500/- per month, in the opinion of this Court, is a very nominal sum and even without the said sum, one cannot imagine that a woman with two children can lead a family. Assuming that the first respondent is able to get some income out of tailoring shop or any other jobs, as she is undertaking as alleged by the petitioner, even that income would not be sufficient to lead a family of three members and therefore, considering these aspects, the learned Judge has directed to give maintenance to the 1st respondent Rs.3,500/- per month which in the considered opinion of this Court, is neither unjustifiable nor on the higher side.

For all these reasons and facts and circumstances of the case, this Court finds no infirmity in the said impugned order and accordingly, the Criminal Revision Case fails. Hence, the same is dismissed. Consequently, connected Miscellaneous Petition is closed.

09.08.2017

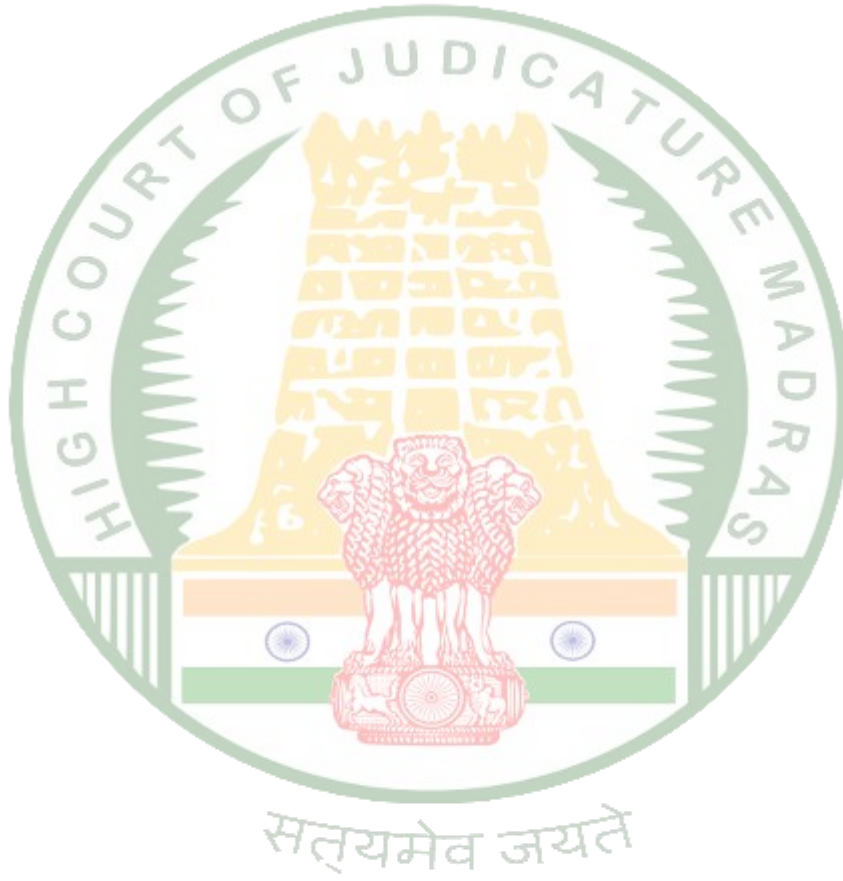
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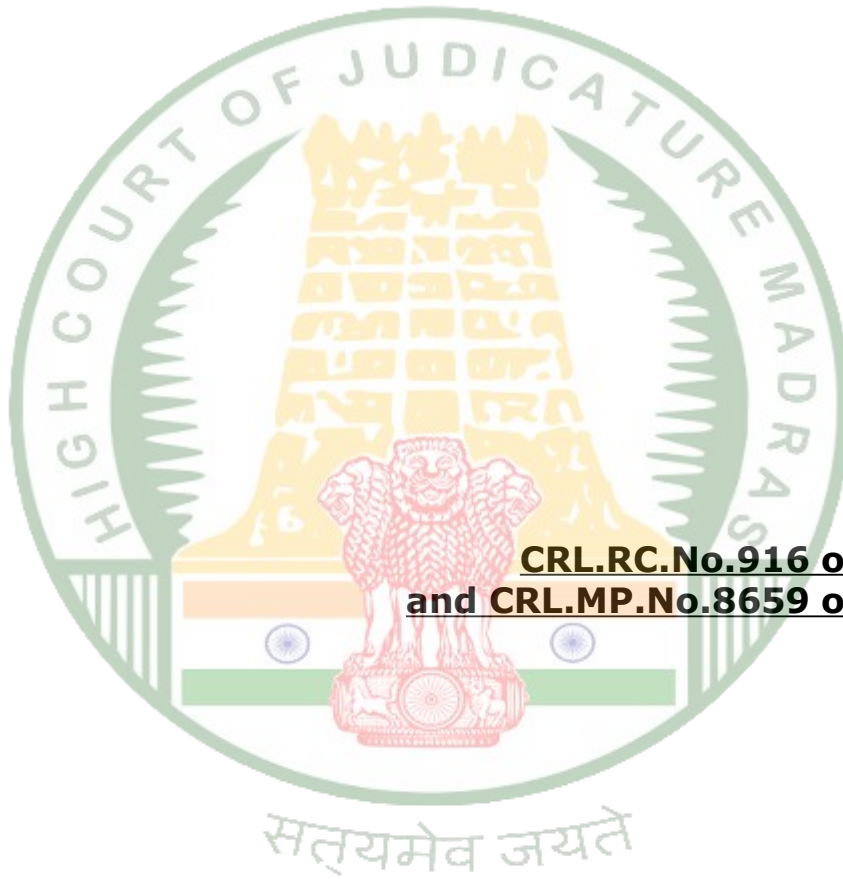
The Principal Judge,
Family Court,
Coimbatore.



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R.SURESH KUMAR, J.

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