

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

Crl.RC.No.313 of 2016
and Crl.MP.No.2087 of 2016

Parthiban

...Petitioner

Vs.

1.Jayanthi

2.Harisha

rep. by her guardian and
mother Mrs.Jayanthi.

...Respondents

Criminal Revision filed under Sections 397 and 401 Cr.P.C., to call for the records of the learned Additional District Judge cum Family Court, Vellore, Vellore District and to set aside the order passed in F.C.M.C.No.116 of 2014 dated 31.12.2015 awarding maintenance a sum of Rs.3,000/- to the 1st respondent and Rs.2000/- to the 2nd respondent from the date of petition.

For Petitioner : Mr.T.R.Ravi

For Respondents : Mr.K.G.Senthilkumar

ORDER

This revision case has been filed against the order passed by the learned Additional District Judge cum Family Court, Vellore, Vellore District, in FCMC.No.116 of 2014 dated 31.12.2015.

2.The 1st respondent/wife along with the 2nd respondent / child filed a maintenance case in FCMC.No.116 of 2014 before the Court below seeking maintenance from the petitioner/husband.

3.The said case was finally disposed of through the impugned order, whereby, the trial Court has directed the petitioner/husband to pay a sum of Rs.3,000/- to the 2nd respondent/child and a sum of Rs.2,000/- to the 1st respondent/wife, altogether Rs.5,000/- per month from the date of petition. Aggrieved over the same, the petitioner/husband has come before this Court with the present revision case.

4.I have heard Mr.T.R.Ravi, learned counsel appearing for the petitioner as well as Mr.K.G.Senthil Kumar, learned counsel appearing for the respondents.

5.It is the case of the petitioner that as projected by the learned counsel appearing for the petitioner, though the petitioner had been working as a Driver for some time, he had not been in continuous service and intermediately, he had been out of service. Even during the service period, only a meager salary has been paid to the petitioner, as the petitioner had been working only with the private vehicle operator and therefore, there is no definite salary for every month.

6.Even before the trial Court, according to the learned counsel appearing for the petitioner, there was no proof to show that the petitioner had been earning Rs.10,000/- per month. However, the trial Court, taking into account the said statement made by the respondent side that the petitioner had been earning a sum of Rs.10,000/- out of his employment every month, has ordered the said sum of Rs.3,000/- plus Rs.2,000/- payable to the respondents towards maintenance every month. Therefore, the learned counsel appearing for the petitioner would state that the said order is liable to be interfered with.

7.Per contra, Mr.K.G.Senthilkumar, learned counsel appearing for the respondents would state that the petitioner had been earning continuously as a Driver in a private bus Company and getting Rs.10,000/- as salary which was taken into account by the trial Court only based on the then prevailing situation and certainly, the salary would have been on the higher side and at present, his earning would be at least a sum of Rs.15,000/- per month. Therefore, the learned counsel appearing for the petitioner would state that out of the said amount, only 50% has been directed to be paid to the respondents as maintenance. The learned counsel appearing for the respondents would also state that the 2nd respondent is studying in a School for which every term Rs.15,000/- has been paid as School Fee and from the day one, the petitioner has not shown any interest in nurturing the child and therefore, only the 1st respondent is taking care of the child and she only has been paying the School Fees. Therefore, the learned counsel appearing for the respondents would state that even Rs.5,000/- is a very meager amount comparing with the present day needs and therefore, the said order need not be interfered with.

8.I have considered the rival submissions made by both sides.

9.There is no much controversy on the issue as to whether the petitioner has to maintain the 1st respondent/wife and the 2nd respondent/child and in that aspect, though some arguments were advanced by the petitioner side stating that the 1st respondent/wife had made a complaint under criminal law against the petitioners and his family members, out of which, conviction has been given against them, against which, they have filed a revision case, which is pending, those aspects

need not be gone into, at this stage. The issue raised in this revision is as to whether the petitioner is obliged to maintain the respondents and the respondents are entitled to claim maintenance from the petitioner. Since the said aspect has already been decided by the trial Court and on going through the said Judgment, this Court feels that the said obligation on the part of the petitioner to maintain the petitioner need not be interfered with.

10.Now, regarding the only question stressed before this Court, is the quantum of maintenance of Rs.3,000/- plus Rs.2,000/-, respectively to the 2nd respondent and the 1st respondent herein is concerned, though it has been supported by the learned counsel appearing for the respondents that such amount is quite a reasonable amount and in fact, it is a lesser amount comparing with the present day money value in the Society, this Court is of the view that there is no full fledged proof that he had been earning Rs.10,000/- per month and also the fact that the said job of the Driver in a private Company cannot be considered to be a permanent job and therefore, based on such employment, it cannot be construed that the petitioner is earning a lot i.e., from Rs.10,000/- to Rs.15,000/- every month as salary, as of now, as claimed by the respondent. It is a common fact that some time the said private job of Drivers or Conductors, may not be a permanent one and intermediately, the person who had been in such job, may lose the job.

11.Nevertheless, since the petitioner is legally bound to maintain his wife and child, he cannot escape from the clutches of law and therefore, he has to pay a reasonable sum to the respondents towards maintenance.

12.After considering the factual matrix of the case, this Court is of the view that, except a slight modification with regard to the quantum of amount directed to be paid, the order passed by the learned Judge, in all other aspects, requires no interference by this Court.

13.In the result, the following orders are passed in this revision.

(1)The petitioner shall pay a sum of Rs.2,000/- to the 2nd respondent and Rs.2,000/- to the 1st respondent, altogether Rs.4,000/- per month as maintenance to the respondents from the date of petition filed before the trial Court continuously.

(2)Since the petition was filed as early as on 24.09.2012, almost five years have gone, the arrears of maintenance would come at as Rs.2,40,000/- at the rate of Rs.4,000/- per month. Out of the said amount Rs.2,40,000/-, since the petitioner has already deposited a sum of Rs.1,05,000/- and Rs.5,000/- per month,

pursuant to the interim order passed by this Court in Crl.MP No.2087 of 2016, by order, dated 24.02.2016 and the said payment has already been acknowledged by the learned counsel appearing for the respondents, the petitioner shall pay the remaining amount towards arrears of maintenance i.e., Rs.1,35,000/- to the respondents within a period of eight weeks from the date of receipt of a copy of this order.

(3)The petitioner shall continue to pay a sum of Rs.4,000/- per month as current maintenance to the respondents from the month of October 2017 and such payment shall be made on or before 10th of every English Calendar month.

With these directions, the order of the Court below, which is impugned herein is modified to the effect as indicated above and the revision case is disposed of accordingly. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mps

To

The Additional District cum Family Judge,
Vellore,
Vellore District.

+lcc to Mr.T.R.Ravi, Advocate, S.R.No.67859
+lcc to Mr.K.G.Senthil Kumar, Advocate, S.R.No.67883

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and Crl.MP.No.2087 of 2016

GMI (CO)
GN(08/11/2017)