

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.R.C.No.84 of 2018
and
Crl.M.P.No.586 of 2018

D.Bharath ... Petitioner

Vs.

1.Minor Sivaranjani
2.Minor Sanjay ... Respondents
(Minor represented by their next friend/
mother V.Kasthuri)

Prayer: Criminal Original Petition filed under Section 397 read with 401 of Cr.P.C., to call for the records in F.C.M.C.No.29 of 2016 dated 02.01.2017 on the file of Family Court, Dharmapuri and set aside the same.

For Petitioner : M/s.M.Malar

For Respondents : Mr.A.S.Vijayaraghavan

ORDER

This criminal revision petition is preferred by the respondent/petitioner against the order passed by the learned Judge, Family Court, Dharmapuri directing him to pay maintenance of Rs.5,000/- per month for each respondent from the date of filing of the petition and to be paid on or before 5th of every succeeding month made in F.C.M.C.No.29 of 2016 dated 02.01.2017.

2.Brief case of the respondent/ petitioner is that:

The facts leading to the present revision petition is that the marriage between the petitioner is married to the mother of the complainant/respondents on 26.3.1999 and out of the wedlock the respondents Sivaranjani and Sanjay were born to them. The respondent/petitioner was working as Advocate and they started their marital life at Laligam. Out of the said wedlock one

female child born on 2.5.2000. The 1st respondent got government job in the year 2000 and they shifted to separate residence and she gave birth the second child. The mother of the complainant/respondents was selected as Typist in the year 2009 but the behavior of the respondent/petitioner became indifferent and used to drink and often humiliated her by suspecting her fidelity. The respondent/petitioner became drunken addict and abuses the mother of the complainant/respondents both verbally and physically. The respondent/petitioner behaved like insane person and the mother of the complainant/respondents apprehends that it is unsafe to live with him and she filed H.M.O.P.No.223 of 2014 for the decree of divorce. The respondent/petitioner had leading immoral life and declined to perform his marital obligation and neglected to maintain the children. Hence petition is filed for maintenance.

3. During the trial, the respondents, the mother of the respondents was examined PW1 and Exhibits-P1 to P3 were marked. Respondent/Petitioner was examined as RW1 and Exhibits-R1 to R3 were marked.

4. On completion of the trial, the learned trial judge directed the respondent/petitioner to pay maintenance at the rate of Rs.5,000/- per month for each respondent from the date of the petition to be paid on or before 5th of every succeeding month to pay maintenance to the respondents.

5. Aggrieved over the same, the respondent/petitioner filed this criminal revision.

6. The learned counsel for the petitioner submits that the lower Court has failed to take note that it is the mother of the respondent who is unwilling to live with this petitioner and has initiated divorce case in HMOP.No.223 of 2014 against the petitioner on the ground of cruelty the said petition was not pursued and was dismissed for default. The greedy intention of the mother of the respondents were clearly illustrated by the action of her in not pursuing the petitions filed by her, as she cannot succeed in that and thereby has filed the above HCMC.No.29 of 2016 before the family Court Dharmapuri through her minor children and thereby has achieved indirectly, what she cannot achieve directly.

7. The learned counsel for the petitioner submits that the lower Court has erred in not noticing that it is the mother of

the respondent who is wealthy than the petitioner and is working as a typist in District Supplying Office, Dharmapuri and earns a monthly salary more than that of the petitioner. Further the lower Court did not take notice of the evidence of petitioner that it is the mother of the respondents who took away the respondents and wanted to live separately and later on came up with false allegation that the petitioner has failed to maintain the respondents. The Court below has failed to take in to consideration the documents submitted and marked as Ex.R1 showing the property details of the mother of the respondents.

8.The learned counsel for the petitioner submits that the lower Court has failed to appreciate that under section 125 of Cr.P.C. maintenance can be ordered only if any person having sufficient means neglects or refuse to maintain, however in the present case the petitioner did not neglect or refuse to maintain the respondents. Therefore the order of the lower Court is not sustainable and is liable to be set aside in limine.

9.The learned counsel for the petitioner submits that the lower Court in its order has allowed Rs.5,000/- per month to each respondents and has not mentioned about Rs.30,000/- per year each for study allowance. However the mother of the respondent has filed petition under Section 128 of Cr.P.C. for collection of maintenance amount, which includes Rs.30,000/- per year for each respondents towards study expenses. The petitioner has fully satisfied the entire maintenance amount in F.C.CMP.No.59 of 2017 in M.C.No.29 of 2016 before the Family Court, Dharmapuri.

10.The respondent working as Revenue Inspector and earns monthly salary is Rs.26,000/- and after all deductions take home salary is only Rs.21,000/- the respondent and appellant joined obtained a housing loan. Further a sum of Rs.9500/- was being deducted every month from respondent S.B. account.

11.The Family Court allowed the F.C.H.M.O.P.No.83 of 2015, the respondent preferred C.M.A.No.2924 of 2017 and the same is pending before this Court.

12.The learned counsel for the respondents objected to the contentions raised by the petitioner and sought for dismissal of the criminal revision.

13.I heard M/s.M.Malar, learned counsel for the petitioner and Mr.A.S.Vijayaraghavan, learned counsel for the respondents and perused the entire materials available on record.

14.This Court do not want to interfere in the well reasoned Judgment passed by the learned trial Court.

15.In the result, this criminal revision is dismissed and the order passed in F.C.M.C.No.29 of 2016 dated 02.01.2017 on the file of learned Family Court, Dharmapuri, is confirmed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The Judge, Family Court, Dharmapuri.

Copy To:

The Section Officer,
Criminal Section, High Court, Madras.

+1 cc to Mr.A.S.Vijayaraghavan, Advocate Sr.No.5330

+1 cc to M/s.M.Malar, Advocate Sr.No.5619

CRL.R.C.No.84 of 2018 and
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CSL/05.03.2019

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