

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL RC No.371 of 2017

B.Thulukanam

... Petitioner

Vs.

1.C.Mahalakshmi

2.P.Vignesh (Minor)

(2nd Respondent is rep. by
his mother and natural guardian,
the 1st respondent)

... Respondents

PRAYER: Criminal Revision petition has been filed under Sections 397 and 401 of Criminal Procedure Code, praying for setting aside the order dated 25.11.2016 in M.C.No.27 of 2013 on the file of the Judicial Magistrate at Tambaram.

For Petitioner : Mr.G.Justin

For Respondents : Mr.A.Iniyan

O R D E R

This Criminal Revision has been filed challenging the order dated 24.11.2016 in M.C.No.27 of 2013 on the file of the learned Judicial Magistrate at Tambaram.

2.The sum and substance of the case as follows;

The petitioner and the first respondent's marriage solemnized on 25.06.2009 at S.V.Ganesa Naicker Thirumana Mandapam, by following the Hindu rites and customs. Out of wedlock, the couple was blessed with one son i.e. the second respondent.

3.When they were leading a matrimonial life, the second respondent was under the care and custody of the first respondent, because, the petitioner is an addict of alcohol. Whenever he consumes alcohol, he abuses the first respondent and talks ill about her character. The first respondent had to tolerate all these things for the well being of the second respondent.

4. Thereafter, the petitioner had deserted the first and second respondents. The first and second respondents had to live separately and the petitioner had failed to provide them basic comforts and totally neglected them. Thereafter, the petitioner casted a divorce petition on the file of the learned Sub-Court, Tambaram.

5. Hence, the first respondent had to file a maintenance petition under Section 125 Cr.P.C., claiming Rs.15,000/- for herself and Rs.10,000/- for the second respondent.

6. The Trial Court after an elaborate trial, found that the petitioner is owning a property which is worth about Rs.15 crores at Babu Niacker Street, Sholinganallur and getting a regular rental income of Rs.50,000/- per month. Hence, the Trial Court after considering the entire materials filed before the Court, awarded a monthly maintenance of Rs.5,000/- each to the first respondent and the second respondent, totally, the petitioner was directed to pay a sum of Rs.10,000/- to the respondents.

7. Aggrieved by the said order, passed by the Trial Court, the petitioner i.e. the husband has preferred the present criminal revision.

8. The learned counsel appearing for the petitioner would submit that during the pendency of the case, the matter was referred to Lok Adalat for amicable settlement. The mutual settlement has been arrived between the parties. The petitioner had agreed thereby to deposit a sum of Rs.2,20,000/- (Rupees Two Lakhs and Twenty Thousand only) towards full and final settlement to the future maintenance of the first respondent.

9. The only dispute now is that the Trial Court had awarded a sum of Rs.5,000/- to the second respondent separately. Thus, the petitioner has come before this Court by filing this Criminal Revision, seeking reduction of some amount from the awarded amount of Rs.5,000/- to the second respondent.

10. The learned counsel for the petitioner would further submit that he has also filed a custody petition before the Trial Court for the custody of the second respondent. Hence, seeking for some reduction in the maintenance amount awarded to the second respondent by the Trial Court. Accordingly, prays to

allow this Criminal Revision.

11. An order under Section 125 of the Criminal Procedure Code can be passed if only an individual is possessing 'sufficient means' but negligence to maintain his wife or child etc., The term 'means' figuring in Section 125 of the Criminal Procedure Code does not speak particular Rule, property or define employment. Moreover 'means' of the husband does not refer to the tangible property or his source of income, but also takes within its fold, his status, capacity and as well as the potentiality. Also the husband need not starve himself with the view to maintain his wife. The capacity to earn ability to earn requires more a fit state either body or mind. It also signifies an opportunity, to earn, education or experience and many a time, finance, push and pull. The husband cannot take a plea that he has no sufficient means to maintain his wife. An able bodied and healthy person should be taken to possess 'means', support his wife. If the husband has a capacity to earn, then, he cannot wriggle out of his liability to maintain his wife, undoubtedly, the concept 'sufficient means' is not limited to pecuniary resources.

12. It is an undisputed fact that the petitioner is the biological father of the second respondent. It is his duty and responsibility to give basic comforts to his own child and it is very difficult to maintain and meet all the requirements of the minor child as a single parent. The great responsibility of maintaining a minor child is not in the shoulder of the petitioner. It is also to be noted that the maintenance amount of Rs.5,000/- awarded to the second respondent is only for the child's well being, which is the duty and responsibility of the father to afford the same. Thus, the award amount of Rs.5,000/- is just and reasonable and this Court did not find any irregularity in the order passed by the learned Judicial Magistrate at Tambaram in M.C.No.27 of 2013 on 25.11.2016.

12. Therefore, the petitioner is hereby directed to deposit the entire arrears amount as awarded by the learned Judicial Magistrate at Tambaram in M.C.No.27 of 2013 dated 25.11.2016 amount within a period of six weeks and also continue to pay a sum of Rs.5,000/- towards monthly maintenance to the second respondent on or before the 5th day of every English Calendar Month.

13. Accordingly, this criminal revision petition stands dismissed as against the second respondent. Consequently, connected Miscellaneous petition if any is closed.

-s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

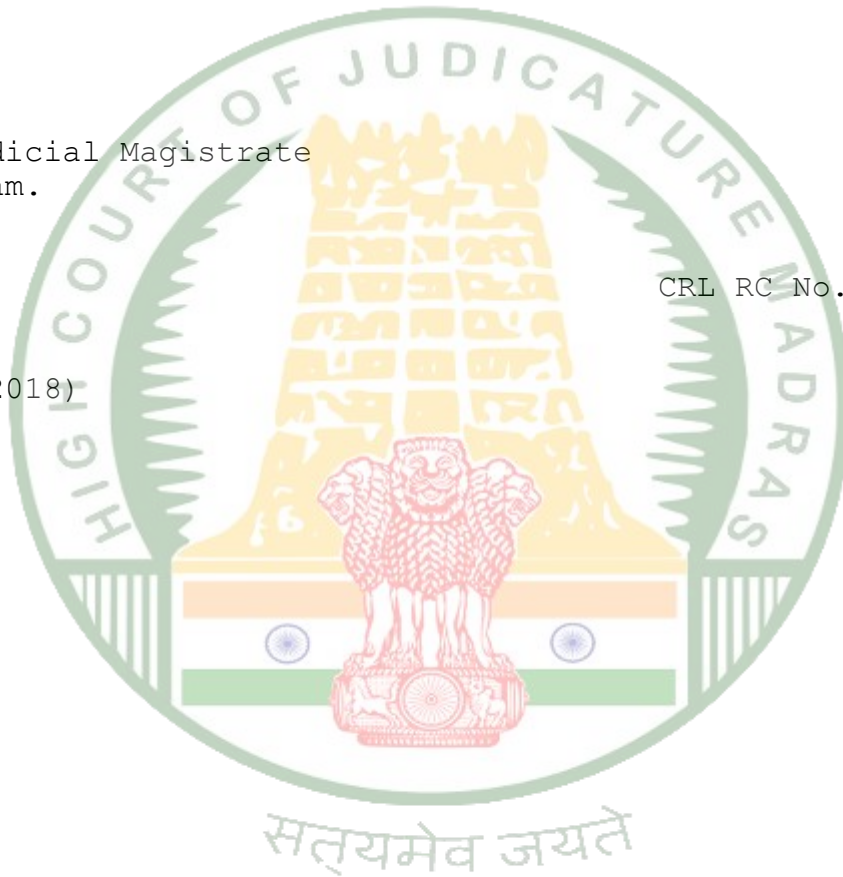
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To

1. The Judicial Magistrate
Tambaram.

CRL RC No.371 of 2017

SPD(CO)
SP(11/10/2018)



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