

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1314 of 2015

and

M.P.No.1 of 2015

Iyappan

...Petitioner

Vs.

1. Varlalakshmi

2. Minor Dhanasree rep.

by Guardian Mother Varalakshmi.

...Respondents

Prayer: This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to set aside the order in M.C.No.63 of 2014 dated 03.06.2015 passed by the Family Court, Erode.

For Petitioner : Mr. R. Vijayan

For Respondents : Mr.K.Vasudevan

O R D E R

The Criminal Revision Case has been filed to set aside the order in M.C.No.63 of 2014 dated 03.06.2015 passed by the Family Court, Erode.

2. The petitioner and the first respondent are husband and wife. The second respondent is the minor daughter of them. According to the revision petitioner, the first respondent left the matrimonial home on her own and also she has given mutual consent. Further, the petitioner has transferred the property in first respondent's name and she sold the property and taken the money. The petitioner is not liable to pay any maintenance and also he filed a divorce petition in O.P.No.42 of 2013 before the learned Subordinate Judge, Sathiyamangalam and the learned Judge

has granted divorce to them and observed in the paragraph 6.5 of the judgment that he already transferred the property in first respondent's name and she only sold the property and taken the money. Further, she has not proved that the first respondent does not have any source of income to maintain herself and also the first respondent has not proved the income of the petitioner. The learned Family Court Judge awarded the maintenance based on the assumption without any proof of income of the revision petitioner concluded that also the respondents are not in a position to maintain them. Therefore, the learned Family Court Judge has failed to consider the oral and documentary evidence and allowed the petition filed by the respondents and directed the petitioner to pay the maintenance of Rs.5,000/- per month each of the respondent. As against the order of the learned Family Court Judge, the present Revision has been filed before this Court.

3. The learned counsel for the respondents would submit that the petitioner and the first respondent are living separately and the second respondent is under the care and custody of the first respondent. The respondents are not having any income to maintain them. The petitioner filed divorce petition before the learned Subordinate Judge, Sathiyamangalam in O.P.No.42/2013 and got divorce. Therefore, it is evident that the respondents are not living with the petitioner and the petitioner as a husband and father respectively, is liable to maintain the respondents. The respondents and the petitioner are living separately and the respondents are entitled for maintenance under Section 125 Cr.P.C.

4. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

5. It is not in dispute that the petitioner herein and the first respondent are husband and wife, their marriage was also admitted; paternity of the second respondent is also admitted; both are living separately and they got divorce in O.P.No.42 of 2013 before the learned Subordinate Judge, Sathiyamangalam. Therefore now the only question is whether the respondents are having sufficient means to maintain them and whether the petitioner is liable to pay maintenance amount under Section 125 Cr.P.C.

6. It is the case of the revision petitioner that the first respondent left the matrimonial home on her own valuation and also she refused to join with the petitioner. Therefore, the petitioner filed the petition before the learned Subordinate Court, Sathiyamangalam in O.P.No.42/2013 and got divorce also. The first respondent has executed the property in her name and

sold it and received the amount and the learned Subordinate Judge granted divorce and also observed in the judgment. Further she herself without any reason neglected to join with the revision petitioner. She left her matrimonial home on her own valuation and residing separately. The revision petitioner is not liable to maintain her.

7. It is the case of the respondents that the petitioner and respondents are living separately. Out of the struggle, she got the maintenance for her minor daughter i.e. second respondent. There is no sufficient means to maintain them. The petitioner admitted in his evidence that he is running a photo frame shop. Since, the marriage is not disputed; and the paternity of the second respondent is also not disputed; and the petitioner has not proved that the respondents are having sufficient means to maintain themselves, the learned Family Court rightly allowed the petition and directed the petitioner to pay a sum of Rs.5,000/- each per month which does not warrants interference.

8. On a perusal of the materials, it is seen that the petitioner is husband and the first respondent is wife and they are living separately. Even the judgment in IDOP No.42/2013 shows that the revision petitioner herein filed a petition against the first respondent for divorce and got the order of divorce. Therefore, they are living separately and there is no materials to produce the maintenance paid to the respondent for lifetime or one time settlement and also there is no evidence to show that she gave mutual consent for divorce and also no evidence to show that she left the matrimonial home on her own valuation. The revision petitioner himself admitted during the examination that he was running a photo frame shop and he is the owner of the said shop. Therefore, the learned Family Court Judge directed the petitioner to pay a sum of Rs.5000/- per month to the respondents each. If the revision petitioner is not liable to pay the maintenance, he has to prove that the respondents are having sufficient means. There is no evidence to show that the respondents are having sufficient means to maintain them. Therefore, the revision petitioner is liable to pay the maintenance to the respondents under Section 125 Cr.P.C. There is no reason to interfere with the order passed by the learned Family Court Judge, Sathiyamangalam in M.C.No.63 of 2014, dated 03.06.2015.

9. Therefore, the revision petitioner is directed to comply the order passed by the learned Family Court Judge, Sathiyamangalam in O.P.No.42, dated 2013 within a period of one month from the date of receipt of a copy of this order, failing which the respondents are at liberty to recover the same in the manner known to law in the Family court, Sathiyamangalam.

10. In the result, the Criminal Revision is dismissed.  
Consequently, connected miscellaneous petition is closed.

rli

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

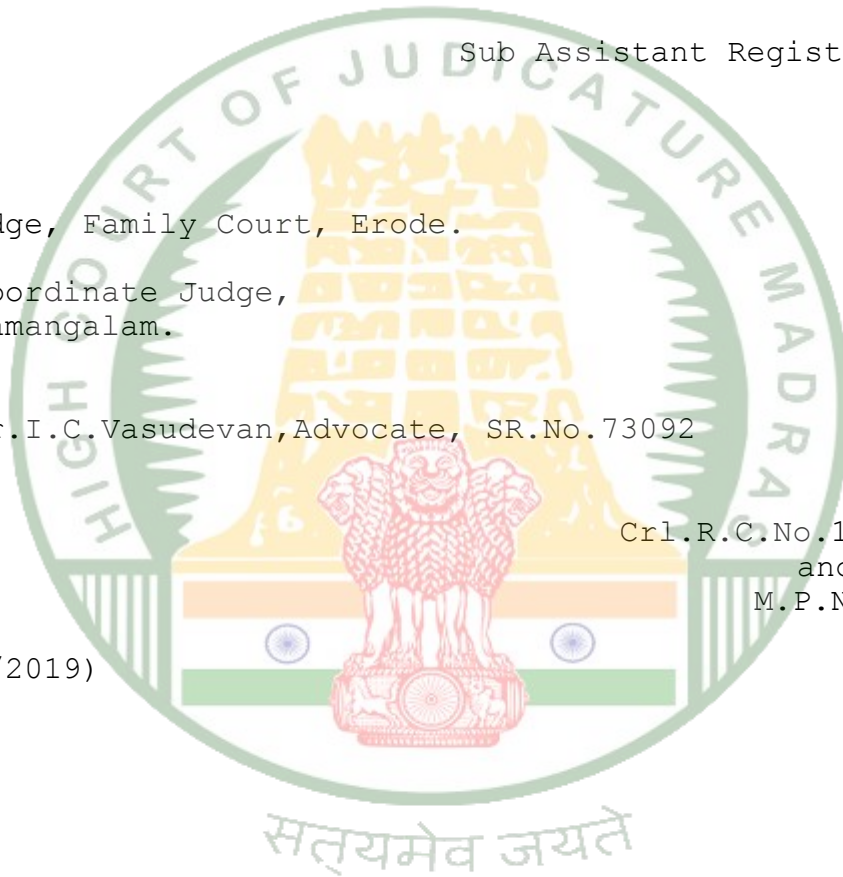
To

1. The Judge, Family Court, Erode.
2. The Subordinate Judge,  
Sathiyamangalam.

+1cc to Mr.I.C.Vasudevan, Advocate, SR.No.73092

Crl.R.C.No.1314 of 2015  
and  
M.P.No.1 of 2015

VD(CO)  
Kak(25/03/2019)



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