

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.889 of 2017

And

Crl.M.P.No.8356 of 2017

Selvakumar

... Petitioner

Vs.

1.Sangeetha

2.Minor Veera Selvam

... Respondents

Prayer:

Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to set aside the order dated 04.04.2017 passed by the learned Family Court Judge at Villupuram in C.M.P.No.22 of 2016 in M.C.No.28 of 2016 by allowing this revision.

For Petitioner : Mr.J.Kamaraj

For Respondents : Mr.R.Thanjan

O R D E R

This criminal revision has been filed seeking to set aside the order dated 04.04.2017 passed by the learned Family Court Judge at Villupuram in C.M.P.No.22 of 2016 in M.C.No.28 of 2016.

2.The case of the petitioner is that the marriage between the petitioner and the first respondent was solemnized on 10.11.2008 at Arulmigu Melmaruvathur Athiparasakthi Temple as per the Hindu Rites and Customs. Out of the wedlock, the second respondent was born to them. Due to difference of opinion, the petitioner and the first respondent are living separately and the second respondent is staying with the petitioner. Whiles, the first respondent filed petition for maintenance in M.C.No.28 of 2016 and during the pendancy of the same, the first respondent filed C.M.P.No.22 of 2016 under Section 125(2) of Cr.P.C., for interim maintenance before the learned Family Court Judge at Villupuram.

3.After elaborate discussions, the learned Family Court Judge at Villupuram vide order dated 04.04.2017 made in C.M.P.No.22 of 2016 in M.C.No.28 of 2016, directed the petitioner to pay a sum of Rs.4,000/- per month as interim maintenance to the first respondent and dismissed the said petition as against the second respondent herein. Aggrieved by the same, the present revision has been filed.

4.The learned counsel appearing for the petitioner would submit that the lower Court erred in fixing the quantum of interim maintenance. He would further submit that the interim maintenance awarded by the lower Court is excessive and would further submit that the lower Court has failed to note that the first respondent left the matrimonial home voluntarily. He would further submit that the first respondent had not taken care of the petitioner as well as his family members and she deserted the petitioner and hence, the petitioner is not liable to pay any amount to the first respondent.

5.The learned counsel appearing for the petitioner would further submit that as per Section 125 (4) of Cr.P.C., no wife shall be entitled to receive an allowance from her husband, if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent. Accordingly, he prayed for allowing the revision.

6.Heard the arguments advanced on either side and perused the materials available on record.

7.The un-disputed facts are that the marriage between the petitioner and the first respondent was solemnized on 10.11.2008 at Arulmigu Melmaruvathur Athiparasakthi Temple as per the Hindu Rites and Customs and out of the wedlock, the second respondent was born to them.

8.Perusal of the order passed by the lower Court discloses that the first respondent herein has filed the petition for maintenance stating that during marriage, her parents had given sreedhana to the petitioner herein and after the birth of the second respondent herein, the petitioner had deserted the respondents 1 and 2. Since the first respondent is suffering from stomach ache very often and since the second respondent is suffering from asthma, due to which, they have to take medical treatment, the first respondent filed the petition for maintenance.

9. Though the learned counsel appearing for the petitioner relied upon Section 125 (4) of Cr.P.C., he did not produce any material before this Court to establish as to why the petitioner is refusing to pay interim maintenance to the first respondent as ordered by the lower Court. In the absence of any material to establish the valid reason for refusal of interim maintenance to the first respondent and unless the petitioner satisfies this Court as to why he is refusing to pay the interim maintenance, this Court cannot interfere with the order of the lower Court in a mechanical manner.

10. Further, considering the present cost of living, the quantum of interim maintenance fixed by the lower Court, in the opinion of this Court, is not onerous or in-appropriate. It is just and reasonable. Hence, I do not find any error in the order passed by the lower Court.

11. In view of all the above, I am not inclined to interfere with the order passed by the lower Court. Accordingly, this criminal revision is dismissed. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Family Court Judge at Villupuram.

+1cc to M/S.R.Thanjan, Advocate Sr.65251
+1cc to M/S.J.Kamaraj, Advocate Sr.65147

Cr1.R.C.No.889 of 2017
And
Cr1.M.P.No.8356 of 2017

vsn II[co]
srg 11/10/2018