

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.04.2018

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.1312 of 2011

1.Praveen George Joseph,
Minor Rep.by his
Natural guardian/Mother Pricilla Delphine Rozario

2.Pricilla Delphine Rozario ... Petitioners

versus

Ramesh Joseph ... Respondent

Prayer:-

Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order dated 26.06.2011 made in M.C.No.365 of 2007 passed by the II Additional Family Court, Chennai and direct the respondent to pay a sum of Rs.10,000/- each per month towards the maintenance of the petitioners.

For Petitioners : Mr.S.Senthilnathan

For Respondent : Mr.Bharatha Chakravarthy

O R D E R

The Revision Petitioners are the petitioners in M.C.No.365 2007 on the file of the learned II Additional Principal Judge [Family Court], Chennai. The said Miscellaneous Case has been filed by the petitioners, in which, they claimed maintenance of Rs.10,000/- each per month from the respondent.

2. The learned II Additional Principal Judge [Family Court], Chennai, passed an order dated 26.06.2011, in which, the respondent is directed to pay a sum of Rs.5,000/- each per month to the petitioners towards their monthly maintenance from the date of filing the petition. As against the said order, the petitioners have filed the present Criminal Revision before this Court, to enhance the maintenance as Rs.10,000/- each per month from the respondent.

3. Admittedly, the marriage between the second petitioner [Pricilla Delphine Rozario] and the respondent [Ramesh Joseph] took place on 21.04.1991 at Our Lady of Good Health Church at Little Mount, Saidapet, Chennai, as per Christian Customs and out of their wedlock, the first petitioner [Praveen George Joseph] was born to them. The respondent being an Engineer in the Tamil Nadu Electricity Board, worked in various places. Meanwhile dispute arose between the second petitioner and the respondent. So, the second petitioner left the matrimonial home. Now, the first petitioner is in the custody of the second petitioner.

4. After filing the case before the learned II Additional Principal Judge [Family Court], Chennai, notice was issued to the respondent for his appearance. But due to the non-appearance of the respondent, exparte order has been passed against the respondent on 02.11.2009. Finally, the petition was partly allowed, in which, the respondent is directed to pay Rs.5,000/- each per month to the petitioners.

5. Aggrieved by the order passed by the learned II Additional Principal Judge [Family Court], Chennai, the petitioners have approached this Court by way of Crl.R.C.No.217 of 2010 for the relief to enhance the maintenance. At the time while disposing the said Revision, this Court considered all aspects and passed the following order:

" 8. In the result, the order dated 03.11.2009 made in M.C.No.365 of 2007 on the file of the II Additional Family Court at Chennai is set aside and M.C.Nos.365 of 2007 is remanded back for fresh disposal after giving due opportunity to both parties to adduce further oral and documentary evidence if any. The Trial Court, after taking up the matter, is directed to fix up a date for hearing and issue due notice to the parties to appear for further appearances on such date and the respondent is directed to pay Rs.60,000/-, towards part of the maintenance arrears within four weeks from such date of hearing fixed by the Trial Court and the Trial Court is thereafter directed to proceed with and dispose of the matter within two months from that date. In the event of the failure on the part of the respondent to pay maintenance arrears, his right to contest the matter on merits is lost and the Trial Court is directed to proceed with the matter on merits on the basis of the available evidence

and on the basis of further evidence if any adduced by the petitioner on merits. On the restoration of the case after remand, the interim maintenance order made in M.P.No.33 of 2008 is automatically revived and the respondent is directed to pay monthly maintenance at Rs.5,000/- till the disposal of the main maintenance case. With these directions, the criminal revision is disposed of. No costs."

6. Subsequent to the passing of the said order, the Maintenance Case filed by the petitioners again went to the Family Court. In the Family Court, again the exparte order was passed against the respondent for the non-payment of maintenance of Rs.60,000/-.

7. In the Trial Court, the second petitioner was examined as P.W.1 and 17 documents were marked on her side to prove the case of the petitioners. In order to dispute the contents of the documents on the side of the respondent, nobody was present to put forth the case of the respondent.

8. In the Trial Court, the salary certificate of the respondent has been marked as Ex.P.16. On going through the copy of Ex.P.16 [salary certificate] would show that the respondent prior to 02.02.2010 drawing a gross salary of Rs.51,156/- and his take home salary was Rs.42,046/- that being the actual salary received by the respondent, the Trial Court fixed Rs.5,000/- as maintenance each to the petitioners is nothing but very meagre as per the salary certificate.

9. In the year 2010 itself, the respondent was drawing the above said salary would show that it is probable as of now the salary of the respondent may be Rs.1,00,000/-. However, without seeing the present salary certificate, we are unable to fix the salary of the respondent as above. However, on considering the fact that the respondent has not appeared before the Trial Court would show that he admits the case of the second petitioner.

10. In the said circumstances, I hold that the respondent is capable to pay the maintenance as prayed by the petitioners in this Revision. Accordingly, the order passed by the II Additional Family Court, Chennai in M.C.No.365 of 2007 dated 26.06.2011 is modified and enhanced the maintenance amount from Rs.5,000/- to Rs.10,000/- and the respondent is directed to pay a sum of Rs.10,000/- per month each to the petitioners from the date of filing this Revision.

11. Today, during the course of arguments, the learned counsel appearing for the respondent would submit that at present the first petitioner has attained the age of majority, but in order to prove the same, he has not produced any certificate in this aspect. Since the first petitioner being a male child, he is entitled to receive the maintenance, as per the limitations fixed under Section 125 of CrI.P.C.

12. In the result, the Criminal Revision filed by the petitioners is allowed. Consequently, the order passed by the II Additional Family Court, Chennai, in M.C.No.365 of 2007 dated 26.06.2011 is modified.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sri

To

The II Additional Principal Judge
[Family Court], Chennai.

+1cc to Mr.S.Senthilnathan, Advocate, S.R.No.31204

+1cc to Mr.Sai Bharath & Illan, Advocate, S.R.No.30462

CrI.R.C.No.1312 of 2011

VGII(CO)
CS/11/05/18

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