

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.366 of 2013

1. Isabella Raja Reeham

2. Vibin (Minor)

rep. By their Mother

and natural Guardian 1st Petitioner

Vs.

...Petitioners/ Petitioners

Arulanantham

...Respondent/Respondent

Prayer: The Criminal Revision case filed under Section 397 read with 401 of Code of Criminal Procedure to call for the records and set aside the Judgment dated 11.11.2012 in M.C.No.261 of 2011 on the file of III Additional Family Court at Chennai.

For Petitioner : Mr.N.Edwin Jeyakumar

For Respondent : Mr.C.Arunkumar

ORDER

Challenging the order dated 11.11.2012 made in M.C.No.261 of 2011 on the file of the III Additional Family Court, Chennai, the petitioners have filed the above Criminal Revision Case.

2. The case of the petitioners is as follows:-

(i) According to the 1st petitioner, she got married with the respondent on 03.11.2006 and out of their wedlock the 2nd petitioner was born to them on 28.07.2009. While so, due to strained relationship between her and the respondent, the respondent deserted her and her minor son on 03.11.2010 and left the matrimonial home. Hence, she has filed a petition in O.P.No.4328 of 2010 for restitution of conjugal right before the III Additional Family Court, Chennai. In the meantime, the respondent filed divorce petition before the learned II Additional Family Court, Chennai in O.P.No.4177 of 2011, which was dismissed for default on 16.06.2012.

(ii) According to the 1st petitioners, she was not

employed anywhere and hence she filed a Maintenance Petition in M.C.No.261 of 2011 before the III Additional Family Court, Chennai to pay a sum of Rs.50,000/- per month to the 1st petitioner and a sum of Rs.1,00,000/- as monthly maintenance to the child and a sum of Rs.20,000/- as litigation expenses. However, the III Additional Family Court, Chennai, dismissed the petition as unnecessary on the ground that O.P.No.4328 of 2010 filed by the petitioners was allowed on 24.09.2012.

(iii) Aggrieved by the order passed in M.C.No.261 of 2011, dated 11.11.2012, the petitioners have filed the above Criminal Revision Case.

3. The learned counsel for the revision petitioners submitted that since the restitution of conjugal right petition has been allowed, the III Additional Family Court, Chennai, ought not to have dismissed the Maintenance Petition filed by the petitioners filed under section 125 of Cr.P.C. Further, the learned counsel submitted that if the husband did not join with the 1st petitioner and live together, the court is bound to pass an order for maintenance.

4. Per contra, learned counsel for the respondent submitted that after passing of the order in the restitution of conjugal rights petition, the 1st petitioner/wife was not co-operating and neglected to join with the respondent. Hence, the respondent filed another petition for divorce. Therefore, there is no merit in the present Criminal Revision Case.

5. Heard the learned counsel on either side and perused the documents available on record.

6. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that since the 1st petitioner and the respondent are living separately for several years, the respondent/husband filed another petition for divorce. It is not in dispute that if the respondent-husband did not join with the petitioner-wife, the court is bound to grant an order for maintenance. On a perusal of the Judgment dated 11.11.2012 passed in M.C.No.261 of 2011 it could be seen that the III Additional Family Court, Chennai, has not gone into the merits of the matter while dismissing the Maintenance Petition.

7. In these circumstances, this court is of the view that the order passed in M.C.No.261 of 2011 is erroneous and is liable to be set aside and remitted back to the III Additional Family Court, Chennai, for fresh consideration.

8. Accordingly, the order dated 11.11.2012 passed in

M.C.No.261 of 2011 is set aside and the matter is remitted back to the III Additional Family Court, Chennai for fresh consideration. The III Additional Principal Judge, Family Court, Chennai is directed to decide the M.C.No.261 of 2011 afresh, on merits and in accordance with law, after giving due opportunity to both sides.

With the above direction, the present Criminal Revision Case is disposed of.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The III Additional Principal Judge
Family Court, Chennai.

+1cc to Mr.C.Arunkumar, Advocate SR.No.62505

+1cc to Mr.N.Edwin Jeyakumar, Advocate SR.No.62380

Cr1.R.C.No.366 of 2013

GMV (24/10/2018)

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