

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.1147 of 2018

and

Crl.M.P.No.13323 of 2018

N.Ramalingam

...Petitioner

Vs.

Sarasu@ Saraswathi

...Respondent

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against order dated 23.07.2018 passed by the learned Sessions Judge, Magalir Neethimandram (FTMC), Udhagamandalam, Judge, Family Court, Udhagamandalam (FAC) in C.M.P.No.2 of 2018 in M.C.No.1 of 2018.

For Petitioner : Mr.L.Mouli

For Respondent : Mr.S.Makesh

ORDER

The above revision case has been filed against the order passed by the learned Sessions Judge, Magalir Neethimandram (FTMC), Udhagamandalam, Judge, Family Court, Udhagamandalam (FAC) in C.M.P.No.2 of 2018 in M.C.No.1 of 2018 dated 23.07.2018, granting interim maintenance of Rs.10,000/- per month and Rs.5,000/- towards expenses for conducting the case, under Section 125(1) Cr.P.C. The respondent/wife, before the Family Court, had sought interim maintenance of Rs.20,000/- and Rs.10,000/- towards expenses for conducting the case from the respondent/husband. According to the respondent/wife, before the Family Court, she had no source of income to maintain herself and in view of the matrimonial dispute with the petitioner/husband, she prayed for interim maintenance. On considering the various relevant factors and also the capacity of payment by the petitioner/husband, the Family Court vide its order dated 23.07.2018, granted interim maintenance of Rs.10,000/- from the month of filing of the petition and till the disposal of the maintenance case in M.C.No.1/2018 and also ordered to pay a sum of Rs.5,000/- towards expenses for conducting the case. The said order is subject matter of challenge in the present revision case.

2 The learned counsel appearing for the revision petitioner/husband would submit that the petitioner has settled some properties on his wife and she was getting monthly income of Rs.20,000/-. On the other hand, the petitioner herein was not having sufficient income to pay the monthly maintenance as ordered by the Family Court. The above contention was resisted by the learned counsel appearing for the respondent/wife stating that the petitioner herein is working as an Assistant Engineer in Tamil Nadu Electricity Board and is earning monthly salary of Rs.70,000/- and therefore he is liable to pay maintenance to the respondent herein, pending decision in M.C.No.1 of 2018.

3 From the pleadings and the materials as placed for consideration before this Court, it could be seen that the respondent/wife has no independent source of income and on the other hand, the petitioner herein was employed as Assistant Engineer in Tamil Nadu Electricity Board and was earning a sizable monthly salary. In fact, the Family Court has ordered only 50% of the amount as sought by the respondent herein i.e. Rs.10,000/- instead of Rs.20,000/- and the amount as ordered to be paid as interim maintenance cannot be said to be unreasonable or excessive. In fact, the Family Court has given a detailed reason as to why the contention put forward on behalf of the petitioner could not be accepted as found in the order and the relevant portion of the order is extracted hereunder:

" The above rival contention of both sides are carefully considered and records are perused by this Court and upon consideration of it this court determines that in this petition the admitted fact is that the respondent is not providing any monthly amount that is cash in kind to maintain the petitioner who is his wife. The respondent contends that after 2005 for the maintenance of the petitioner he has given a house bearing Door No.4/91 situated at Oorumali Village and also 25 cents of tea estate and 25 cents of agricultural land for the livelihood of the petitioner and that through the agricultural activities in the said lands petitioner is getting a monthly income of Rs.20,000/- and apart from the said contention, the respondent has not claimed that the petitioner is having any other source of income of her own to maintain herself. But in this petition no document is filed by the respondent to prove that he has given a house bearing Door No.4/91 situated at Oorumalai Village and also 25 cents of tea

estate and 25 cents of agricultural land towards maintenance of the petitioner and further more in this petition no document is also filed by the respondent to establish that he is the owner of those properties and so under such circumstances this court determines that in the absence of elaborate enquiry involving oral and documentary evidence at this juncture in this petition it could not be held that the respondent has given a house bearing Door No.4/91 situated at Oorumalai Village and also 25 cents of tea estate and 25 cents of agricultural land towards maintenance of the petitioner and as decided above admittedly no monthly amount is being provided by the respondent towards maintenance of his wife the petitioner herein and the disposal of M.C.No.1/2018 involving oral and documentary evidence would take considerable time and so when petitioner admittedly has no independent sufficient source of income to maintain herself, the respondent who has sufficient means that is income through his salary who neglects to maintain the petitioner is legally bound to maintain the petitioner and so she is entitled for interim monthly maintenance from the respondent who is her husband and the respondent is legally bound to pay it to the petitioner till the disposal of M.C.No.1/2018 and so now only the quantum of interim maintenance amount for which petitioner is legally entitled has to be determined."

4. In view of the fact that the above decision, being well founded, on the basis of admitted facts, this Court does not think that the order passed by the learned Sessions Judge call for interference by entertaining the present criminal revision case. Therefore, the revision case is liable to be dismissed and the same is dismissed. Consequently connected miscellaneous petition is closed.

cgi

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

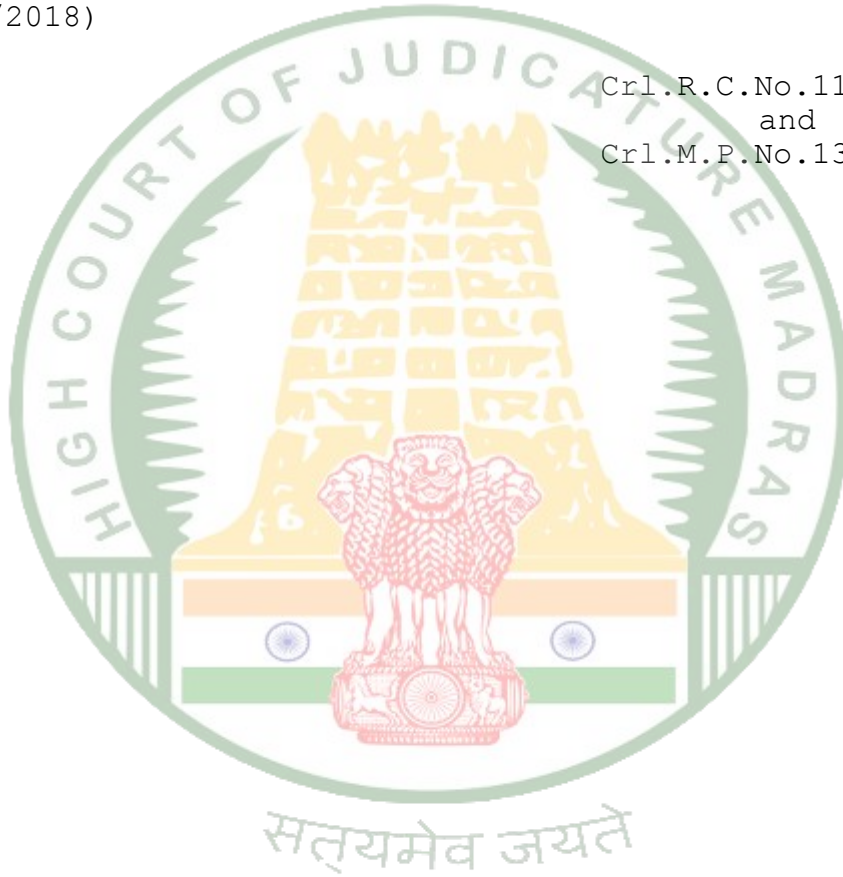
Sub Assistant Registrar

To
The Sessions Judge,
Magalir Neethimandram (FTMC),
Udhagamandalam, Judge, Family Court,
Udhagamandalam (FAC)

+lcc to Mr.L.Mouli, Advocate, S.R.No.81009
+lcc to Mr.S.Makesh, Advocate, S.R.No.80365

kan(CO)
kak(20/12/2018)

Crl.R.C.No.1147 of 2018
and
Crl.M.P.No.13323 of 2018



WEB COPY