



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2018

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRANCr1.R.C.(MD).No.714 of 2017

WEB COPY

V.Kannan

...Revision Petitioner/Respondent/Respondent

Vs.

Uma Maheswari

...Respondent / Petitioner / Petitioner

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code, praying to call for the records in Cr.M.P.No.22 of 2017 in M.C.No.3 of 2016 on the file of the Family Court, Tirunelveli and set aside the order dated 03.03.2017.

For Petitioner : Mr.S.Pon Senthil Kumaran

For Respondent : Mr.J.Jeyakumaran

ORDER

Heard the learned counsel appearing for the petitioner and the respondent.

2. The petitioner herein is the husband of the respondent. Since the petitioner / husband has deserted the respondent / wife, she has filed a petition for maintenance before the Family Court, Tirunelveli. The learned Magistrate has initially fixed monthly maintenance of Rs.2,500/- by an order dated 05.03.2016. After one year, in the year 2017, the respondent / wife has filed another petition under Section 127 Cr.P.C., for enhancement of the maintenance amount and also succeeded in her petition. The Family Court, Tirunelveli, has modified the monthly maintenance amount as Rs.5,000/-, taking note of the fact that the petitioner is running a shop at Madurai Meenkshi Amman Temple. However, now, by way of this revision, the petitioner / husband submits that he is not the owner of the shop, he is only a coolie working in the said shop, that too, after the fire accident in Madurai Meenakshi Amman Temple, the shop was affected and now, he is jobless. Hence, the petitioner prayed to set aside the order of the Family Court, Tirunelveli, in Cr.M.P.No.22 of 2017 in M.C.No.3 of 2016, dated 03.03.2017.

3. The learned counsel appearing for the petitioner submitted that he is leading his life by working as an agricultural coolie and his annual income is only Rs.60,000/-. In support of his submission, he has filed a copy of the Income Certificate issued from the Head Quarters Deputy Tahsildar, Taluk Office, Thiruparankundram, showing that his annual income is Rs.60,000/-.



4. The learned counsel appearing for the petitioner would also submit that the petitioner is always ready to join and live with the respondent / wife, but, the respondent / wife refused for re-union. Referring to Section 125 (3) Cr.P.C., the learned counsel appearing for the petitioner would submit that when the petitioner / husband is ready to take his wife, the learned Magistrate ought to have considered the refusal of his wife, while deciding the quantum of maintenance.

5. On perusal of records and pleadings, this Court does not find any material to infer that the petitioner herein has offered in-writing that he will take up his wife and maintain her. In the absence of said undertaking, the order of the trial Court fixing monthly maintenance as Rs.5,000/- cannot be faulted. Further, it is always open to the petitioner herein to file application for modification of the maintenance amount submitting materials on the basis of change in circumstances and fall in the income of the petitioner / husband. If he has real intention to take back his wife, he can file proper application to the Court and seek for remedy. Therefore, taking note of the present cost of living, this Court finds no merit in the present revision petition challenging the enhancement of monthly maintenance from Rs.2,500 to Rs.5,000/-. However, as pointed out earlier, for any modification or change, the petitioner shall be at liberty to approach the trial Court.

6. With the above observations, the Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(w)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Judge, Family Court, Tirunelveli.

+1cc to Mr.J.Jeyakumaran, Advocate Sr.No.80093

SM

VB/RSK/SAR1/17.09.2018/2P/3C

Crl.R.C.(MD).No.714 of 2017
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