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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.01.2018

Delivered on : 29.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CrI.O.P. (MD) No.9595 of 2013

J.Abraham Johnson

... Petitioner

Vs.

1.J.Sudaroli

2.Joel (Minor)

S/o.J.Sudaroli

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in M.C.No.8 of 2011, dated 29.03.2012 on the file of the Judicial Magistrate Court, Nagercoil and to modify the said order and pass a reasonable cost for maintenance taking into account of the difficulty of the petitioner.

For Petitioner : Mr.M.R.Sreenivasan
For Respondents : Mr.C.Godwin

ORDER

This Criminal Original Petition has been filed to set aside the order dated 29.03.2012, passed in M.C.No.8 of 2011 by the learned Chief Judicial Magistrate, Kanyakumari District @ Nagercoil and award a reasonable amount towards maintenance, for taking into account of the difficulty of the petitioner.

2.The petitioner herein is the respondent in M.C.No.8 of 2011 on the file of the Chief Judicial Magistrate Court, Kanyakumari District @ Nagercoil. Admittedly, the petitioner is the husband of the first respondent and the second respondent is the child born to them out of their wedlock.

3.After giving birth to the second respondent, due to family dispute, the first respondent left the matrimonial home on 01.08.2005. Thereafter, the petitioner herein filed a petition in I.D.O.P.No.94 of 2008, in which, he is seeking the relief of restitution of conjugal rights. While so, at the same time, the first respondent has filed another application in M.C.No.8 of 2011 under Section 125 Cr.P.C., in which, she is claiming maintenance for herself and on behalf of the second respondent from the petitioner, wherein, the learned Chief Judicial Magistrate, Kanyakumari District



@ Nagercoil, passed an order dated 29.03.2012, directing the petitioner to pay maintenance of Rs.4,000/- each, totally Rs.8,000/- to the respondents. Aggrieved over the same, the petitioner herein filed Crl.R.P.No.26 of 2012 before the District and Sessions Court, Kanyakumari. The said Revision Petition was also dismissed on 01.03.2013. Therefore, he filed the present petition before this Court to set aside the order, dated 29.03.2012, passed by the learned Chief Judicial Magistrate, Kanyakumari District @ Nagercoil.

4.The first contention raised by the petitioner is that the Trial Court at the time of passing orders in favour of the respondents, did not take into account that the respondents are possessed with 50 cents of immovable property, which will be worth more than Rs.75 Lakhs.

5.On considering the submission made by the learned counsel in the Trial Court, this issue was discussed as the petitioner herein did not produce any document to show that the respondents derived income from the property standing in their names and came to the conclusion that the possession of the above land is not sufficient to maintain themselves.

6.Further, during the time of giving evidence, the petitioner categorically stated that he does not know anything about the income derived from the abovesaid property. Being the husband, the petitioner herein is having the duty to prove that his wife is having sufficient income to maintain herself. But, in this case, the petitioner being the respondent in the Trial Court, did not produce any document in order to show the income derived from the property.

7.The other contention raised by the petitioner in the Trial Court is that the first respondent herein while at the time of giving evidence admitted that she was working as a Lab Assistant. But, without considering the income derived from that post, the Trial Court awarded huge amount as maintenance, which is not justifiable.

8.Now, on discussing the said arguments with the averment mentioned in the petition at Page No.4, Paragraph No.10, the petitioner himself has mentioned that the first respondent was working as a Lab Assistant for some period. Further, the first respondent gave evidence before the Trial Court, as she was working as a Lab Assistant for some period alone. In this occasion also, if really the contention raised by the petitioner is true one, being the husband, he ought to have taken steps to examine the appropriate officer for the purpose of proving the income derived by the first respondent. In the order passed by the Trial Court, the said aspect was clearly dealt with and the Trial Court came to the conclusion that the petitioner is not taking any effective steps to examine the first respondent in order to prove the income of the first respondent. In this occasion also, the conclusion arrived by the Trial Court is not having any perversity.



9. Furthermore, in the Trial Court, the petitioner admitted that he is receiving the monthly salary of Rs.28,000/-. For which, the learned counsel appearing for the petitioner submitted that after recovery for various loans, the petitioner herein received a sum of Rs.4,500/- per month alone as net amount. So, the petitioner herein is unable to maintain the respondents. Now, considering the said argument along with the conclusion arrived at by the Trial Court, it seems that in the Trial Court, the petitioner herein had not submitted salary certificate in order to show the deductions from his salary. On the other hand, he admits that he was working as P.G. Assistant in a Government School. Now-a-days, the persons, who are working as P.G. Assistant in a Government School is getting a monthly salary not below Rs.40,000/-. So, the contention raised by the petitioner, he is unable to give maintenance, is not properly proved before the Trial Court.

10. In the abovesaid circumstances, the Trial Court had passed an order dated 29.03.2012, directing the petitioner to pay a sum of Rs.4,000/- each to the first and second respondents, which is not excessive.

11. Considering the facts and circumstances, the said amount is nothing but a nominal one. Accordingly, this petition is not having any valid point for passing an order in favour of the petitioner. Hence, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Kanyakumari District @ Nagercoil.

+1cc to M/S.M.R.Sreenivasan, Advocate SR.No. 44826
+1cc to M/S.C.Godwin, Advocate SR.No. 44478

Crl.O.P. (MD) No.9595 of 2013
29.01.2018

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