

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.182 of 2019

Karpagam

.. Petitioner

Vs.

Mani

.. Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C., against the order dated 21.12.2018 passed by the learned Judicial Magistrate No.1, Attur in M.C.No.27 of 2018.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mr.E.Kannadasan

O R D E R

This Criminal Revision has been filed against the order dated 21.12.2018 passed by the learned Judicial Magistrate No.1, Attur in M.C.No.27 of 2018.

2. The revision petitioner is the wife and the respondent is the husband. The revision petitioner/wife filed a petition under Section 125 Cr.P.C for maintenance in MC.No.27 of 2018 before the learned Judicial Magistrate No.1, Attur. After enquiry, the learned Judicial Magistrate No.1, Attur, found that the respondent/husband is earning a sum of Rs.45,000/- per month and the petitioner/wife is unable to maintain herself. Despite the respondent/husband is having sufficient means, refused to maintain his wife and hence, awarded a sum of Rs.7,000/- towards monthly maintenance on 21.12.2018. Challenging the said order, the wife has filed the present revision stating that monthly maintenance awarded by the learned Judicial Magistrate No.1, Attur, is not sufficient.

3. Though the husband himself admitted that he is earning a sum of Rs.45,000/- as monthly salary, the learned Magistrate failed to consider the income of the husband and awarded only a sum of Rs.7,000/- per month towards monthly maintenance, which is not sufficient to maintain herself. Hence, the wife has filed the present revision seeking enhancement of maintenance.

4. The learned counsel for the petitioner would submit that the respondent/husband himself admitted that he is working as a Teacher and getting a salary of Rs.50,000/-, whereas he has denied the same and stated that his monthly salary is Rs.45,000/-. No salary certificate was produced by either of the parties before the learned Magistrate to prove that the actual income of the respondent/husband. As admitted by the respondent/husband in his counter affidavit that he is earning a sum of Rs.45,000/-, the trial court awarded a sum of Rs.7,000/- to the petitioner/wife towards maintenance.

5. The learned counsel for the respondent would submit that the revision petitioner/wife is also completed teacher training course, she is also fully qualified to go to job. Even prior to filing of this petition, she herself admitted that she was in employment and subsequently, she left the job.

6. Heard the learned counsel for the petitioner, the learned counsel for the respondent and also perused the materials on record.

7. On a perusal of the records, it is seen that the respondent/husband filed a petition for divorce on the ground of desertion in HMOP.No.78 of 2018 on the file of Subordinate Court, Attur and the same is pending. During the pendency of HMOP.No.78 of 2018, the respondent/wife has filed the petition under Section 125 Cr.P.C. When the wife appeared in this case and also defending the petition for divorce filed by the husband, she can file a petition under Section 24 of Hindu Marriage Act for interim alimony and thereafter for permanent alimony under Section 25 of the Hindu Marriage Act but not under Section 125 of Cr.P.C. The proceedings under Section 125 Cr.P.C is summary in nature.

8. In the circumstances, this Court is of the view that during pendency of the Petition for divorce filed by the husband before the competent Civil Court, wife is not entitled to file the petition under Section 125 Cr.P.C. Hence, this Court does not find any reason to interfere with the order passed by the Court below.

9. This Criminal Revision Case is dismissed. It is open to the petitioner/wife to file a petition under Section 24 of Hindu Marriage Act and get relief thereunder.

Sd/-
Deputy Registrar (CJ Conf.,)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The Judicial Magistrate No.1,
Attur.

2. - do - through The Chief Judicial Magistrate,
Salem District.

+1 cc to Mr.E.Kannadasan, Advocate, S.R.No.35465

CrI.R.C.No.182 of 2019

EV(CO)
SSM(18/06/2019)



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