

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.1139 of 2012

Ramasamy

...Petitioner/Respondent

Vs.

1. Rajeswari
2. Minor R.Rajan
- 2nd respondent represented by his mother
- 1st respondent

...Respondents/Petitioners

This Criminal Revision is filed under Sections 397 and 401 of Code of Criminal Procedure to call for the records and set aside the order passed by the learned Chief Judicial Magistrate, Perambalur, in M.C.No.37 of 2010 dated 23.05.2011.

For Petitioner : Mr.P.Nagaraju
For Respondents : Mr.T.Saikrishnan for
M/s.Sai, Bharath & Ilan

ORDER

The criminal revision has been filed seeking to set aside the order passed by the learned Chief Judicial Magistrate, Perambalur, in M.C.No.37 of 2010 dated 23.05.2011.

2 The petitioner is husband, first respondent is wife and second respondent is the child. The marriage between the petitioner and respondent was solemnized on 14.09.1993 and thereafter due to cruelty caused by the petitioner husband, the first respondent wife left the matrimonial home. The petitioner has filed a petition for dissolution of marriage in H.M.O.P.No.58 of 2010 and the same is pending. The respondents had filed a case in M.C.No.37 of 2010 before the learned Chief Judicial Magistrate under Section 125 of Cr.P.C., seeking maintenance. The learned Magistrate, after enquiry, by order dated 23.05.2011 had awarded maintenance at Rs.2,500/- for each of the respondents. Challenging the said order of maintenance, the husband has filed the present revision before this Court.

3 The main contention raised by the petitioner/husband before the Magistrate is that the first respondent had illegal intimacy with male members and she left the matrimonial home on her own and therefore, he filed a petition seeking divorce and the same is also pending. When the matter came up for hearing on 26.06.2019, at request of the learned counsel for the petitioner only the matter was directed to be listed today. Even today, when the matter is called for hearing, the learned counsel for the petitioner has stated that the counsel, who appeared before the trial Court has got a job and left the profession and he could not obtain any instructions. The learned counsel appearing for the respondents would submit that the petitioner has not complied with the directions given by this Court, for that the learned counsel for the petitioner replied that the petitioner has already complied with the order, which shows that both the learned counsel for the past seven years did not take any care to dispose of the case, despite sufficient opportunities given. Since the revision is against the order of maintenance and both the learned counsel are not interested in conducting the case, this Court is inclined to dispose of the revision on merit.

4 It is the contention of the the revision petitioner/husband that the first respondent/wife leading an immoral life and left the matrimonial home on her own. Per contra, the first respondent/wife has taken a stand that the petitioner/husband caused mental and physical cruelty and also demanded dowry and therefore she left the matrimonial home. The first respondent/wife does not have any means to maintain herself and also the child, whereas, the petitioner/husband despite having sufficient means, neglected to maintain his wife and child, who are unable to maintain themselves.

5 There is no evidence to show that the respondent/wife has sufficient means to maintain herself and the child. There is no sufficient proof to show that the wife leading immoral life. The learned Magistrate has awarded only Rs.2,500/- each per month, which is very reasonable. Under these circumstances, this Court does not find any perversity in the order warranting interference. There is no merit in the revision and hence the same is dismissed. The petitioner/husband is directed to pay entire arrears of maintenance immediately, less the amount already paid pursuant to the order of this Court.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate, Perambalur.

+1cc to Mr.P.Nagarajan, Advocate SR.62194

+1cc to Mr.Sai Bharath Advocate SR.61814

Cr1.R.C.1139 of 2012

LN(CO)

CB(11/10/2019)



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