

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.197 of 2019

1. Janani

2. Minor K.J.Jawahar

(Represented by his mother i.e.

1st petitioner)

...Petitioners/Petitioners

-Vs-

K.Kannan

...Respondent/Respondent

This Criminal Revision Petition is filed under Sections 397 read with Section 401 of Cr.P.C. to call for entire records in pursuant to the maintenance application in F.C.M.C.No.71 of 2017 vide order dated 01.11.2018 on the file of the Family Court, Vellore, Vellore District and set aside the same.

For Petitioners : Mr.S.Raja Ravivarma

O R D E R

The first petitioner is wife, respondent is husband and 2nd petitioner is their minor child. The petitioners have filed a petition under Section 125 of Cr.P.C. before the Family Court, Vellore, seeking maintenance. The learned Judge, after adverting to the materials placed on record and after hearing both the parties, by an order dated 01.11.2018 had dismissed the same on the ground that the petitioners suppressed the fact of pendency of proceedings in H.M.O.P.No.31 of 2017 for restitution of conjugal rights filed by the respondent/husband, against which, the petitioners are before this Court with the present criminal revision case.

2 According to the learned counsel for the petitioners, since cruelty faced by the petitioner in the matrimonial house, she left and living separately with her minor child. The respondent has sufficient mesne to maintain the petitioners and he is bound to do the same. The Court below has failed to consider the above fact and erroneously dismissed the petition, which warrants interference.

3 Heard the learned counsel appearing for the petitioners and perused the materials placed on record.

4 Admittedly, the respondent has filed the petition for restitution of conjugal rights, before filing of the present case under Section 125 of Cr.P.C. by the petitioners, in which, notice was also sent to the petitioners, but the first petitioner did not send any reply for the same. The first petitioner had not stated any reason for living separately except stating that she was subjected to cruelty. This Court is of the view that pending case for restitution of conjugal rights, filing of petition under Section 125 will not arise, when there is an alternative remedy available under Section 24 of the Hindu Marriage Act. Therefore, the order dated 01.11.2018 made in F.C.M.C.No.71 of 2017 is hereby set aside and the petition in F.C.M.C.No.71 of 2017 under Section 125 of Cr.P.C. shall be treated as a petition under Section 24 of the Hindu Marriage Act and the Family Court is directed to dispose of the above petition afresh in accordance with law after converting the same into petition under Section 24 of the Hindu Marriage Act.

5 With the above directions, this criminal revision case is disposed of.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Family Court, Vellore.

+1 CC to Mr.S.Raja Ravivarma, Advocate sr 10638

सत्यमेव जयते

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SJ(CO)
SP(07/03/2019)

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