

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NO.454 OF 2012

AND

M.P.NO.1 OF 2012

S.Suresh

...Petitioner

-Vs-

1. N.Revathi

2. S.S.Keerthika

Minor, Rep by her mother and
Next Friend N.Revathi

...Respondent

Prayer:

Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure, 1973 to allow the revision petition and to set aside the order passed in M.C.No.5 of 2006 by the learned II Additional Family Court, Chennai dated 24.02.2012.

For Petitioner : Mr.C.K.M.Appaji

For Respondents : Mr.Kotteeswaran

O R D E R

The Criminal Revision Case has been filed to set aside the order passed in M.C.No.5 of 2006 by the learned II Additional Family Court, Chennai dated 24.02.2012.

2. The petitioner and the first respondent are husband and wife. The second respondent is the minor daughter. The marriage between the petitioner and the first respondent was solemnized on 31.08.1995 according to Hindu rites and customs. Due to misunderstanding, they were living separately. Despite having sufficient means, the revision petitioner neglected and refused to maintain the respondents. Therefore, the respondents filed a petition under Section 125 Cr.P.C., before the II Additional Family Court, Chennai for maintenance and the same was taken on file in M.C.No.5 of 2006. After hearing both sides, the learned Judge allowed the case in part on 24.02.2012 and directed the

petitioner to pay a sum of Rs.2,000/- each per month to the respondents.

3. Challenging the order passed by the II Additional Family Court, Chennai in M.C.No.5 of 2006 dated 24.02.2012, the revision petitioner has filed the present revision before this Court.

4. The learned counsel for the petitioner would submit that the revision petitioner filed a petition for restitution of conjugal rights before the learned Sub Court, Poonamallee, in H.M.O.P.No.235 of 2000 and the same was allowed. Even after the order of the Sub Court, the first respondent has not come to matrimonial home. The petitioner has no job and no means to maintain himself and also the respondents. The first respondent is running a grocery shop and earning income, she is able to maintain herself and she is not entitled to get maintenance from the revision petitioner. The learned counsel for the petitioner would further submit that the second respondent has attained majority. He would further submit that if she is already married, she is not entitled to get maintenance. The learned Family Court failed to consider these aspects and allowed the maintenance petition. Therefore, the learned counsel prays to set aside the order of the Family Court.

5. The learned counsel for the respondents would submit that the petitioner and the first respondent are living separately and the second respondent is under the care and custody of the first respondent and they did not have any means to maintain themselves. Despite having sufficient means, the petitioner refused to maintain the respondents. The Family Court, elaborately discussed the maintenance case and ordered to pay a sum of Rs.2,000/- each per month to the respondents. Therefore, there is no reason to interfere with the order of the Family Court.

6. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

7. It is not in dispute that the petitioner herein and the first respondent are husband and wife, there is no dispute with regard to the marriage and paternity of the second respondent, both are living separately.

8. It is the case of the revision petitioner that the first respondent left the matrimonial home on her own and she also refused to join with the petitioner. The learned counsel for the petitioner submitted that the revision petitioner filed a petition for restitution of conjugal rights before the learned Sub Court, Poonamallee, in H.M.O.P.No.235 of 2000 and the same

was allowed. Even after the order of the Sub Court, Poonamallee, the respondent has not come to matrimonial home.

9. The Family Court observed that the petitioner is working in a Voltas Company and earning about Rs.10,000/- per month and doing finance business along with his father, in which he has 50% share in the income of his father.

10. On a perusal of the materials, the Family Court found that despite having sufficient means, he refused to maintain the respondents. There is no evidence to show that the respondents are having sufficient means to maintain themselves. Since the paternity of the child is not disputed and being a female child, as a dutiful father, is liable to maintain till her marriage.

11. Considering the cost of living prevailing as on date, this Court feels that the award of Rs.2,000/- each per month passed by the learned II Additional Family Court, Chennai in M.C.No.5 of 2012, dated 24.02.2006 is not excessive. Hence, the petitioner is directed to deposit the entire arrears of maintenance, less the amount already deposited and he is directed to pay the remaining arrears of maintenance amount within a period of eight weeks from the date of receipt of a copy of this order. Further, the petitioner is directed to pay the monthly maintenance regularly to the respondents as ordered by the Family Court on or before 5th day of every English Calendar month without any default.

12. In the result, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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To

The II Additional Family Court, Chennai.

+1cc to Mr.C.K.M.Appaji, Advocate, S.R.No.54354

Crl.R.C.No.454 of 2012
and
M.P.No.1 of 2012

PM(CO)
CS/03/02/2020