

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.851 of 2012
and M.P.No.1 of 2012

Kumar

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Petitioner

Vs.

1. Neelambal

2. Dineshkumar
rep.by his mother Neelambal

Respondents

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the order dated 04.10.2011 passed in M.C.No.15 of
2010 on the file of the Judicial Magistrate Court, Rasipuram.

For Petitioner : Ms.R.Shase
for Mr.M.Guruprasad

For Respondents: Ms.N.Premalatha
for Mr.R.Nalliyappan

O R D E R

This criminal revision has been filed seeking to set aside
the order 04.10.2011 passed in M.C.No.15 of 2010 on the file of
the Judicial Magistrate Court, Rasipuram.

2. For the sake of convenience, the parties will be referred
to by their name.

3. Neelambal got married to Kumar on 29.05.1998 and through
the wedlock, they were blessed with a son Dinesh Kumar. On
account of matrimonial discord, the couple got estranged
resulting in Neelambal and Dinesh Kumar filing M.C.No.15 of 2010
under Section 125 Cr.P.C., before the Judicial Magistrate Court,
Rasipuram, for maintenance from Kumar.

4. Before the trial Court, Neelambal examined herself as PW1
and marked five exhibits.

5. Kumar entered appearance and contested the case. Before the trial Court, Kumar examined himself as DW1, but, did not mark any document.

6. After considering the evidence on record and hearing either side, the trial Court, by order dated 04.10.2011 in M.C.No.15 of 2010, returned a finding that Kumar had failed and neglected to maintain Neelambal and Dinesh Kumar and hence, Kumar was directed to pay a sum of Rs.1,500/- per month each, as maintenance, aggrieved by which, Kumar is before this Court under Section 397 r/w 401 Cr.P.C.

7. Heard Ms.R.Shase, learned counsel representing Mr.M.Guruprasad, learned counsel on record for Kumar and Ms.N.Premalatha, learned counsel representing Mr.R.Nalliyappan, learned counsel on record for Neelambal.

8. At the time of admission of this revision, this Court had granted interim stay, on condition, that Kumar should deposit a sum of Rs.40,000/-, towards arrears of maintenance within four weeks from the date of receipt of a copy of the order and it is not known whether he has complied with the said order.

9. The learned counsel for Kumar submitted that the trial Court has grievously erred in not appreciating the evidence adduced by Kumar that Neelambal, had, on her own accord, decided to live away and she also has sufficient means to maintain herself and her son. She further submitted that Neelambal had failed to prove the financial ability of Kumar inasmuch as she has admitted in her cross-examination that Kumar was not going for work.

10. Per contra, the learned counsel for Neelambal refuted the submissions made by the learned counsel for Kumar.

11. This Court gave its anxious consideration to the rival submissions.

12. The marriage and the paternity of the child has not been disputed by Kumar. Neelambal, in her evidence, has stated that Kumar was not properly taking care of the family and was quarreling with her frequently, on account of which, she had to go to the police station and seek protection very often; Kumar was working as a mason.

13. The learned counsel for Kumar submitted that Kumar did not have sufficient income and Neelambal's parents are affluent.

14. In the opinion of this Court, it is the moral and legal duty of the husband to maintain his wife and child and he cannot be heard to say that he has no proper employment.

15. It is not the case of Kumar that Neelambal was employed. The affluence of Neelambal's parents can have no relevance in deciding her claim. The quantum of maintenance of Rs.1,500/- each, fixed by the trial Court cannot be said to be excessive given the today's cost of living.

16. Under such circumstances, this Court does not find any infirmity in the order passed by the Court below, warranting interference.

In the result, this criminal revision is dismissed as being devoid of merits. Connected M.P. is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate,
Rasipuram.

Copy to:

2. The Section Officer
(Crl.Side)
Madras High Court,
Chennai - 104. (with a direction to return the original
records to the trial Court)

Cr1.R.C.No.851 of 2012

vd(co)
nr 02/01/2020