



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.946 of 2012

and

MP.No.1 of 2012

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M.Velu

.. Petitioner

Vs.

1.M.Ambika

2.Minor Priyadharshini

rep. By mother and Guardian Ambika

.. Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C., against the order dated 14.03.2012 made in MC.No.2 of 2011 passed by the learned Judicial Magistrate No.VI, Salem.

For Petitioner : Mr.D.J.Venkatesan

For Respondents: Mr.D.Shivakumaran

O R D E R

This Criminal Revision has been filed against the order dated 14.03.2012 made in MC.No.2 of 2011 passed by the learned Judicial Magistrate No.VI, Salem.

2. The revision petitioner is the husband, the first respondent is the wife and the second respondent is the minor child. The respondents filed a petition under Section 125 of Cr.P.C in M.C.No.2 of 2011 before the learned Judicial Magistrate No.VI, Salem, in the year of 2011. The revision petitioner/husband filed a counter stating that the first respondent left the matrimonial home without any valid reason. On 14.03.2012, after completing the enquiry, the learned Magistrate found that the revision petitioner/husband has not established his defence and the respondents/petitioners therein established their case that they are not having sufficient means to maintain themselves and directed the revision petitioner/husband to pay a sum of Rs.3,000/- to the respondents from the date of petition and continue to pay every month on or before 10th day of English Calendar month towards monthly maintenance. Challenging the said order, the husband filed the



present revision before this Court.

3. The learned counsel appearing for the revision petitioner would submit that the first respondent/wife left the matrimonial home without any valid reason. Therefore, the revision petitioner/husband filed a petition for restitution of conjugal rights and the first respondent/wife has not come forward to live with the revision petitioner/husband. Further, he has filed a petition for dissolution of marriage in HMOP No.22 of 2009 before the Subordinate Court, Salem and ex-parte order was passed in the said petition. Since the first respondent/wife left the matrimonial home without any reason and despite the order passed in restitution of conjugal rights petition, she refused to live with the revision petitioner/husband and she has not entitled any maintenance. The first respondent/wife got an employment and she is earning more than the revision petitioner/husband and hence, she is having sufficient means to maintain themselves. The trial Court failed to consider the above fact and awarded a sum of Rs.3000/- as maintenance, warrants interference.

4. The learned counsel appearing for the respondents would submit that despite having sufficient means, the revision petitioner/husband neglected to maintain his wife and child. The revision petitioner/husband is working as mason and he is earning a sum of Rs.10,000/- per month. Though the respondents are entitled to get a sum of Rs.6,000/- [Rs.3000/- each] as maintenance, they have claimed only Rs.3000/- towards maintenance. The learned Magistrate found that the respondents are not having sufficient means to maintain themselves and rightly awarded Rs.3,000/- to the respondents, which does not warrant any interference.

5. Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondents and also perused the entire materials available on record.

6. It is not in dispute that the petitioner is the husband and the first respondent is the wife. The paternity of the second respondent/minor child is also not in dispute. The respondent/wife filed a petition under Section 125 of Cr.P.C in M.C.No.2 of 2011 before the Judicial Magistrate Court No.6, Salem, in the year of 2010. On 14.03.2012, the learned Magistrate, after enquiry, directed the respondent therein/husband to pay a sum of Rs.3,000/- to the petitioners therein/respondents herein towards monthly maintenance from the date of the petition and continue to pay every month on or before 10th day of English Calendar month. Though the revision petitioner has stated that the first respondent is having sufficient means to maintain themselves, he has not proved the



same. This Court finds that the first respondent/wife has not in employment and has no sufficient means to maintain themselves. It is a well settled law that a divorced wife can also get maintenance until she remarries.

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7. This Court finds that the respondents are not having sufficient means to maintain themselves. Despite having sufficient means, the revision petitioner/husband refused to maintain the respondents. The learned Magistrate rightly pointed out that though each of the respondent is entitled to get a sum of Rs.3,000/- as maintenance, they sought only Rs.3,000/- and therefore, awarded a sum of Rs.3,000/- to the respondents towards maintenance. On reading of the entire materials, this Court does not find any merit in the present revision and the same is liable to be dismissed.

8. Accordingly, this Criminal Revision Case is dismissed. The order dated 14.03.2012 made in M.C.No.2 of 2011 passed by the learned Judicial Magistrate No.6, Salem, is hereby confirmed. The revision petitioner is directed to pay the entire arrears to the respondents from the date of filing the maintenance case till today, within two months from the date of receipt of a copy of this order. The revision petitioner is also directed to pay the monthly maintenance amount of Rs.3,000/- to the respondents as directed by the Court below. Consequently, connected miscellaneous petition is closed.

KMI

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Judicial Magistrate No.6,
Salem.

Copy to:-

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+1cc to Mr.D.Shivakumaran, Advocate, SR.No.50297

Cr1.R.C.No.946 of 2012

Kak(29/08/2019)