

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1252 of 2013

P.Rajan @ Raja

... Petitioner

- Vs -

1. R.Muthu Rathi @ Rathi

2. D.Divyalakshmi (Minor)

Rep. by her natural guardian

Mrs.R.Muthu Rathi@ Rathi

.. Respondents

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C., praying to set aside the order dated 20.03.2013 passed in MC.No.490 of 2008 by the learned III Additional Principal Judge, Family Court, Chennai.

For Petitioner : Mr.C.Samivel

For respondents: Mr.A.Ilaya Perumal

O R D E R

This Criminal Revision Case has been filed to set aside the order dated 20.03.2013 passed in MC.No.490 of 2008 by the learned III Additional Principal Judge, Family Court, Chennai.

2. The revision petitioner is the husband, the first respondent is the wife and the second respondent is the minor daughter. The marriage between the petitioner and the first respondent was solemnised on 15.09.1988 and out of their wedlock, they blessed with one son and one daughter, who is the second respondent herein. Due to misunderstanding between the parties, the first respondent left the matrimonial home and lived in her parental home. Subsequently, the first respondent/wife filed a petition for restitution of conjugal rights in O.P.No.2051 of 2006. According to the respondents, the petitioner married another woman and they blessed with one male child. Even after getting the order under Section 9 of Hindu Marriage Act, the first respondent could not join with the petitioner. Subsequently, the first respondent filed a petition under Section 125 of Cr.P.C in M.C.No.490 of 2008 seeking maintenance before the learned III Additional Principal Judge, Family Court, Chennai. On 20.03.2013 the learned Judge, after enquiry, directed the respondent therein/husband to pay a sum of Rs.3000/- to each of the petitioners therein/wife and minor

daughter towards monthly maintenance from the date of the petition and continue to pay every month on or before 5th day of English Calendar month. 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. After leaving the matrimonial home, the first respondent filed a petition for restitution of conjugal rights in OP.No.2051 of 2006. Even after getting the order in the said OP, she has not joined with the revision petitioner. For name sake, she filed a petition under Section 9 of Hindu Marriage Act and got an order of restitution of conjugal rights, subsequently, she refused to join with the petitioner. The revision petitioner also lost his left eye and suffering from disability of 15% vision in his right eye, he has also lost his job and he is now unable to maintain himself. The revision petitioner is not in a position to pay maintenance to his wife and child. The learned Judge failed to consider all these facts and awarded a sum of Rs.3000/- each to the respondents, which warrants interference.

4. The learned counsel appearing for the respondents would submit that the petitioner/husband married another woman and therefore, the first respondent filed a private complaint in C.C.No.2222 of 2009 before the learned Metropolitan Magistrate and the same is pending. Since the petitioner/husband married another woman, the first respondent/wife left the matrimonial home and also she was not in a position to live with the petitioner/husband. She is unable to maintain herself and her daughter and hence, she filed a petition under Section 125 of Cr.P.C seeking maintenance to herself and her daughter. The learned Judge rightly appreciated the evidence and found that the petitioner is having sufficient means to maintain himself and the respondents are unable to maintain themselves and awarded a sum of Rs.3000/- to each of the respondents, which does not warrant any interference.

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

6. It is not in dispute that the revision petitioner is the husband, the first respondent is the wife and the second respondent is the minor child. The respondents filed a case in M.C.No.490 of 2008 seeking maintenance before the learned III Additional Principal Judge, Family Court, Chennai. On 20.03.2012, the learned Magistrate, after enquiry, passed an order of maintenance by directing the respondent therein/husband

to pay a sum of Rs.3000/- to each of the petitioners therein/wife and minor child towards monthly maintenance from the date of the petition and continue to pay every month on or before 5th day of English Calendar month. Though the learned counsel for the petitioner submitted that the petitioner is suffering with 15% disability at his right eye and also lost his left eye and job, there is no evidence to prove the same. In the counter affidavit filed by the alleged second wife of the petitioner in C.C.No.2222 of 2009, she has stated that since the revision petitioner herein going for employment, he could not take care of his mother and the first respondent/wife also did not take care of his mother and hence, the revision petitioner engaged her for taking care of his mother and out of her intimacy with him, she got a male child. Once it is admitted that the alleged second wife got intimacy with the revision petitioner herein/husband, no woman would bear and live with the husband. Therefore, the contention of the learned counsel for the petitioner that the first respondent/wife left the matrimonial home without any valid reason is not acceptable. In the circumstances, the reason for leaving the matrimonial home by the first respondent is justifiable. As far as the quantum of maintenance is concerned, the counterpart of the revision petitioner herself stated in her counter in C.C.No.2222 of 2009 that the revision petitioner is going for employment. Considering the above facts and circumstances, this Court does not find any perversity in the order passed by the Court below. There is no merit in the revision and the same is liable to be dismissed.

7. Accordingly, this Criminal Revision Case is dismissed. The order dated 20.03.2012 in M.C.No.490 of 2008 passed by the learned III Additional Principal Judge, Family Court, Chennai, is hereby confirmed. The revision petitioner is directed to deposit the entire arrears of the maintenance from the date of filing the maintenance case till today into the Court below, within a period of one month 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.6000/- [Rs.3000*2]/- to the respondents as directed by the Court below.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

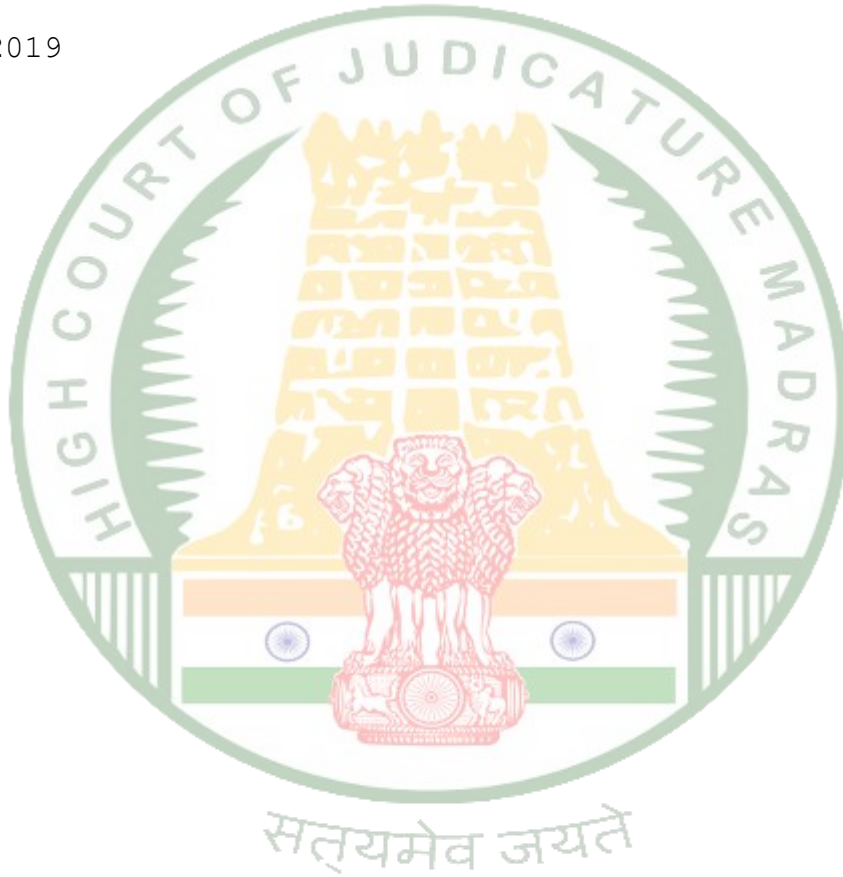
To

The III Additional Principal Judge,
Family Court, Chennai.

+1cc to Mr.C.Samivel, Advocate sr.70702
+1cc to Mr.A.Ilaya Perumal, Advocate sr.71364

Crl.R.C.No.1252 of 2013

nr 26/08/2019



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