

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Cr1.R.C.No.869 of 2013

1.S.Karpagam

2. T.Saravanan (Minor)

rep.by his mother S.Karpagam

...Petitioners

-Vs-

S.Tamilmani

...Respondent

This Criminal Revision Petition is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order dated 03.09.2012 passed in M.C.No.523 of 2005 on the file of the Family Court, Chennai.

For Petitioners : Mr.B.Gurunathan

For Respondent : Notice not served

ORDER

This revision has been filed to set aside the order dated 03.09.2012 passed in M.C.No.523 of 2005, on the file of the Family Court, Chennai.

2. The petitioner is the wife and the respondent is the husband. The second petitioner is their son. The marriage between the first petitioner and the respondent was solemnized on 16.06.1997 at Neyveli Township Block-24, Thirumana mandapam as per the Hindu rites and customs. In the wedlock, one male child was born. Due to misunderstanding, the petitioner and the respondents are living separately. The petitioners have filed a case in M.C.No.523 of 2005 before the Family Court, Chennai for maintenance under Section 125 of Cr.P.C.

3. It is seen from the records that even prior to the filing of the maintenance case, the wife has filed a petition in O.P.No.1414 of 2014 against her husband for restitution of conjugal rights before the Principal Judge, Chennai. The husband has filed a petition in O.P.No.46 of 2004 for dissolution of marriage as against his wife before the learned Sub Court at Vridhachalam. The petition filed by the petitioner in O.P.No. 46

of 2004, on the file of the learned Subordinate Court, Vridhachalam was transferred to the Family Court, Chennai, which was re-numbered in O.P.No.1550 of 2004. During pendency of both the petitions, the petitioners herein filed a case in M.C.No.523 of 2005 before the very same Court for interim maintenance. The Judge, Family Court clubbed all the cases together ie. both the petitions for divorce and for restitution of conjugal rights filed by the first petitioner and the respondent and also the maintenance case, and passed the common order. The petition in O.P.No.1550 of 2004 filed by the husband for divorce was granted. In the maintenance case, the learned Judge, Family Court has disallowed the maintenance for wife/first petitioner and awarded a sum of Rs.500/- to the second petitioner/minor son till he attains majority.

4. Challenging the said common order 03.09.2012 in M.C.No.523 of 2005, passed by the Family Court, the wife has filed the present revision before this Court.

5. The first petitioner has not challenged the order passed in O.P.s' for restitution of conjugal rights and for setting aside the divorce. The learned Judge, Family Court found that the first petitioner has got source of income to maintain herself. The respondent/husband has no income to maintain his wife and son. Therefore, the learned Judge, disallowed the maintenance for the first petitioner/wife. During the cross examination, the first petitioner herself admitted that that the respondent/husband has no job. Though they are living in the joint family, all the expenses were met out by the brother of the respondent. Therefore, the learned Judge found that the first petitioner is having means to maintain herself and that she is earning a sum of Rs.2500/- by doing tailoring work. Therefore, the Family Court disallowed the petition filed by the petitioners.

6. The first petitioner herself has admitted that she is doing tailoring work and earning Rs.2,500/- per month, and her husband is unemployed. It implies that the respondent has no earning at all. Therefore, the order passed by the Family Court does not warrant any interference with regard to the first petitioner. On a perusal of the entire records, it could be seen that the respondent is living in joint family and all the family expenses are met out by the respondent's brother and the respondent has no physical disability. Therefore, the respondent is liable to pay maintenance to his child, who is unable to maintain himself.

7. The first petitioner has not proved that despite having sufficient means, the respondent has neglected to maintain the petitioners. Therefore, this Court does not find any reason to interfere with the order passed by the Family Court in M.C.No.523 of 2005, dated 03.09.2012.

8. Once the learned Judge, Family Court found that as per Section 125 of Cr.P.C., if the respondent/husband have no means to maintain himself and there is no perversity in the order passed by the Family Court. Per contra the petitioners have not proved that despite having sufficient means and has neglected to pay maintenance to the revision petitioners. However, as a dutiful father, the respondent has to maintain the second petitioner/minor son. The respondent shall continue to pay the maintenance amount to the second petitioner as directed by the learned Principal Judge, Family Court, Chennai in M.C.No.523 of 2005, dated 03.09.2012, on or before 5th of every English Calender month, without any default.

9. With the above observations and direction, this Criminal Revision is dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Principal Judge,
Family Court, Chennai.

+1 cc to M/s.B.Gurunathan, Advocate Sr.No. 70435

AKM/31.10.19/3P-3C /

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