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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.06.2019

DELIVERED ON: 05.07.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

CrI.R.C. No.1252 of 2016 & CrI.M.P. No.11277 of 2016

Sabarinathan

Petitioner/ respondent

vs.

1 Ramya

2 Subiksha

Minor represented by mother

and next friend Ramya

Respondents/ Petitioner

Criminal Revision filed under Section 397 r/w Section 401 Cr.P.C. seeking to call for the records in F.C.O.P. No.154 of 2014 passed by the Family Court, Vellore and set aside the order dated 29.04.2016

For petitioner:Mr. R. Sankarasubbu

For respondents:Mr. V.K. Rajagopalan

ORDER

For the sake of convenience, the parties are referred to by their name.

2 The facts in brief leading to the institution of this criminal revision are as under:

2.1 Sabarinathan married Ramya on 24.06.2010 and they have a child by name Subiksha through the wedlock. According to Ramya, after the birth of Subiksha, Sabarinathan neglected to maintain her and Subiksha. Hence, Ramya filed M.C.No. 154



of 2014 before the Family Court, Vellore under Section 125 Cr.P.C. claiming maintenance.

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2.2 On notice, Sabarinathan entered appearance and did not dispute either his marriage with Ramya or the birth of Subiksha to them. It was his contention that he had not neglected to maintain Ramya and Subiksha.

2.3 Before the Trial Court, while Ramya examined herself as P.W.1 and Rajan Babu, her father as P.W.2 and marked three exhibits, Sabarinathan examined himself as R.W.1 and one Krishnamurthy, his neighbour as R.W.2 and marked one exhibit.

2.4 After considering the evidence on record and on hearing either side, the Trial Court, by order dated 29.04.2016 in M.C. No.154 of 2014, has directed Sabarinathan to pay as maintenance, a sum of Rs.7,000/- per month to Ramya and Rs.5,000/- per month to Subiksha from the date of the petition, challenging which, Sabarinathan is before this Court.

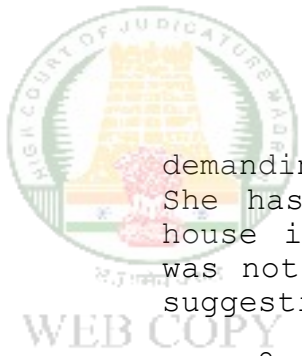
3 Heard Mr. R. Sankarasubbu, learned counsel for Sabarinathan and Mr.V.K.Rajagopalan, learned counsel for Ramya.

4 The learned counsel for Sabarinathan submitted that the Trial Court had failed to take into consideration the fact that Sabarinathan had never neglected to maintain Ramya and that Sabarinathan is ready and willing to live with her, but, it is only Ramya who had decided to live separately away from the company of Sabarinathan. He also contended that Ramya had failed to adduce any evidence to show the earnings of Sabarinathan and therefore, the award of maintenance of Rs.12,000/- per month is excessive.

5 Per contra, the learned counsel for Ramya refuted the contentions put forth by the learned counsel for Sabarinathan.

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

7 While exercising powers under Section 397 Cr.P.C., this Court is required to see whether there is any illegality or impropriety in the order passed by the Court below warranting interference. Ramya, in her evidence, has stated that after marriage, the family members of Sabarinathan were making snide remarks about her obesity and were frequently



demanding 25 sovereigns besides a sum of Rs.5 lakhs as dowry. She has very clearly stated that she was thrown out of the house in March 2013. In the cross-examination, Sabarinathan was not able to make any dent in her testimony except putting suggestions to her, which she has denied.

8 Sabarinathan, in his evidence, has merely denied the allegations of Ramya and did not even disclose where he was working and how much he was drawing. He has merely stated in his evidence that he was working as a contract labourer abroad.

9 Mr. Sankarasubbu contended that at present, Sabarinathan is in India and has lost the overseas job also.

10 Krishnamoorthy, a neighbour, who was examined as R.W.2 by Sabarinathan, has admitted in the cross-examination that he does not know the circumstances under which Ramya was living separately and away from Sabarinathan.

11 The fact remains that Sabarinathan did not adduce any evidence, much less any satisfactory evidence, to demolish the evidence adduced by Ramya nor did he disclose the employment particulars and earnings which are facts exclusively known to him. The Trial Court has invoked the presumption under Section 106 of the Evidence Act and has held against Sabarinathan, which cannot be said to be either illegal or improper, in the facts and circumstances of the case. In the opinion of this Court, a sum of Rs.12,000/- per month for two persons given the prevailing cost of living, cannot be said to be excessive, especially bearing in mind the fact that Subiksha has to be given education in a decent school. Thus, this Court does not find any infirmity in the order impugned passed by the Trial Court warranting interference.

As a sequel, this criminal revision fails and is accordingly dismissed. Connected Crl.M.P. is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar



To
The Family Judge
Vellore

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+1cc to Mr.R.Sankarasubbu , Advocate SR.No. 57293

+1cc to Mr.V.K.Rajagopalan , Advocate SR.No. 56310

Crl.R.C. No.1252 of 2016

A.SK(06/08/2019)