



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.03.2019

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CrI.RC.No.62 of 2018
and
CrI.M.P.No.468 of 2018

Sivakumar

... petitioner/Respondent

-Vs-

1. Jayanthi

2. Amirtha Jessy

... Respondents/Petitioner

Prayer: Criminal revision is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records of the learned Family Judge, Dharmapuri, Dharmapuri District in F.C.M.C.No.20 of 2017 dated 23.10.2017 and to set aside the same.

For petitioner : Mr.D.Sivashanmugam
For Respondent : Ms.G.Sumitra

O R D E R

The Criminal Revision is filed to call for the records of the learned Family Judge, Dharmapuri, Dharmapuri District in F.C.M.C.No.20 of 2017 dated 23.10.2017 and to set aside the same.

2. The revision petitioner is the husband and the first respondent is his wife and the second respondent is their daughter. The marriage between the petitioner and the first respondent had taken place on 17.04.2011 at Chinnatirupathi. Out of the wedlock, they were blessed with a female child. After the marriage, they lived together in the matrimonial home. Subsequently, due to the difference of opinion, they were living separately. Hence, the first and second respondent herein have filed a petition under Section 125 of Criminal Procedure Code, claiming maintenance, before the learned Family Court, Dharmapuri. The same was taken on file in F.C.M.C.No.20 of 2017, which was allowed and the petitioner was directed to pay a sum of Rs.10,000/- per month as interim maintenance to the first



respondent and to pay a sum of Rs.5,000/- per month to the second respondent and to pay a sum of Rs.30,000/- towards education expenses of the second respondent. As against the order passed by the learned Family Court Judge, the petitioner has filed the present Criminal Revision before this Court.

3. The learned counsel for the petitioner would submit that the first respondent is working as teacher and she is able to maintain herself. Therefore, the first respondent is not entitled to get maintenance. The Family Court has failed to consider the complaint filed by the first respondent before the All Women Police Station, Dharmapuri. Therefore, the order passed by the learned Family Court which warrants interference.

4. The learned counsel for the respondents would submit that it is the duty of the husband to prove that the first respondent /wife is having sufficient means to maintain herself. In support of her contention, the learned counsel for the respondents has placed reliance on the decision of the Hon'ble Supreme Court reported in 1999 (6) SCC 326 (Rajathi vs. C. Ganesh). The Family Court has rightly allowed the case for maintenance to the respondents does not warrants interference.

5. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents and perused the materials available on record.

6. The marriage between the petitioner and the respondent is not in dispute and the relationship between them is also not in dispute. The respondent has filed the divorce petition , against which the husband has filed the civil miscellaneous appeal before this Court and the same is pending before the division Bench of this Court. The initial burden is on the first respondent/wife to prove that the petitioner has got sufficient means and that he has neglected to pay her. In this case, admittedly, the revision petitioner/husband is working as a teacher and at that time of filing the case, he was earning a sum of Rs.23,174/- per month. After the seventh pay commission, he would get more than that. There is no dispute with reference to the means of the husband. The petitioner/husband submitted that if the first respondent/wife is unable to maintain herself, she is entitled for getting maintenance from the husband.

7. A reading of the complaint filed by the first respondent/wife before the All Women Police Station, Dharmapuri, on 23.01.2014, clearly shows that the petitioner/husband is working as teacher and the first respondent is also working as teacher. Once she admitted the said fact, she has to say what is her earning capacity and what is her salary. Out of her salary, if she is unable to maintain herself and her child, what



is the amount of maintenance she required from her husband. Therefore, the first respondent/wife has not disclosed her salary and all other income. She has suppressed the material facts and she has not come to this Court with clean hands and she is not entitled to get maintenance. The decision referred to by the learned counsel for the respondents is not applicable to the present case on hand. The trial court has failed to consider all the aspects and passed an order regarding the maintenance amount towards the first respondent/wife is set aside.

8. As already stated, marriage between the parties and relationship between them are not in dispute and paternity of the child is also not in dispute. Both the petitioner and the first respondent are working and they have sufficient means. Admittedly, the second respondent is in the custody of the first respondent/mother and she is maintaining her child. As a father, he is liable to maintain his daughter. Therefore, this Court finds that despite he is having sufficient means, he has neglected to pay maintenance to the child as the child is unable to maintain herself.

9. Considering the cost of living prevailing as on date, the petitioner is directed to pay a sum of Rs.15,000/- to the second respondent towards maintenance. In addition to that, the petitioner is directed to pay a sum of Rs.30,000/- per annum towards educational expenses.

10. With the above modification, this Criminal Revision Case is disposed of. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Family Judge,
Dharmapuri.

+1cc to M/s.G.Sumitra, Advocate sr.26362

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nr 03/09/2019