

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.376 of 2019
and
Crl.M.P.No.5531 of 2019

Udhaya Saravanan Revision Petitioner

Vs.

1.S.Prema

2.Minor U.Athisaya Respondents

[Minor represented by her mother
and natural guardian S.Prema,
the 1st respondent]

Prayer: Criminal Revision Case filed under Section 397 and 401 Cr.P.C., praying to set aside the order dated 18.02.2019 passed in M.P.No.957 of 2018 in M.C.No.66 of 2018 on the file of the Principal Family Court, Chennai.

For Petitioner : Mr.R.Amizhthu

For Respondents : M/s.Lekha Shankar

ORDER

This Criminal Revision Case has been filed to set aside the order dated 18.02.2019 made in M.P.No.957 of 2018 in M.C.No.66 of 2018 on the file of the Principal Family Court, Chennai.

2.For the sake of convenience, the parties will be referred to by their name.

3.Prema got married to Udhaya Saravanan on 22.08.2005 and through the wedlock, they have a child Athisaya, who is now 12 years old and studying in 8th Std. Admittedly, Udhaya Saravanan is a dentist by profession. Their marriage ran into rough weather resulting in spouses getting estranged. Since, Udhaya

Saravanan failed to maintain his wife and child, Prema filed M.C.No.66 of 2018 under Section 125 Cr.P.C. before the Family Court, Chennai, for maintenance. Pendente lite, she filed M.P.No.957 of 2018 in M.C.No.66 of 2018, seeking interim maintenance of Rs.50,000/- each. On notice, Udhaya Saravanan contested the case in M.P.No.957 of 2018. On behalf of Udhaya Saravanan, 23 documents were filed and were marked as R1 to R23.

4.After hearing either side, the Family Court, by order dated 18.02.2019 in M.P.No.957 of 2018 in M.C.No.66 of 2018, has directed Udhaya Saravanan to pay Rs.20,000/- each (Rs.40,000/- per month) as interim maintenance with arrears calculated till 28.02.2018, challenging which, Udhaya Saravanan is before this Court.

5.Heard Mr.R.Amizhthu, learned counsel appearing for Udhaya Saravanan and Ms.Lekha Shankar, learned counsel appearing for Prema.

6.Mr.R.Amizhthu submitted that Udhaya Saravanan was not successful as a dentist and therefore, he is working in a software company in Bengaluru and therefore, the sum of Rs.40,000/- awarded by the Family Court is far and excessive and that he cannot make the payment.

7.Refuting the contentions, Ms.Lekha Shankar, learned counsel appearing for the wife submitted that, Prema is a 10th drop-out and suffers from hearing impairment. She contended that, for deciding the quantum of maintenance, one parameter which is adopted is, to find out the number of dependents on the husband. The learned counsel contended that Udhaya Saravanan's mother is no more and his father had retired from the Indian Overseas Bank as a Senior Manager, who is a pensioner himself. Udhaya Saravanan's sister is married and Udhaya Saravanan owns three houses.

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

9.It may be apposite to extract the discussion portion of the order dated 18.02.2019, passed by the Family Court, which is under.

"It is an unique and peculiar case to notice the respondent being a dentist has transformed as a software professional. From the records and from the counter statement it is apparent that the respondent is taking up dual profession. The exact quantum of income from his job with Softtek, Bengaluru could be identified through Ex.R13. According to the income tax assessment, the monthly salary of the respondent is

Rs.53,000/- approximately which is for the previous year. From the documents in Ex.R9 to Ex.R.11, the salary escalation could be identified. Hence a presumption arises that the current salary of the respondent would be Rs.70,000/- approximately. Until unless the respondent does not provides his current salary statement, there cannot be an exact determination.

Further the respondent denies that he has no income through the dental profession. The statement rendered by him in his counter statement itself would be self speaking that the respondent is capable of paying salary to the junior dentists to a tune of Rs.10,000/- per month and the monthly rent to a tune of Rs.6000/- for his dental clinic, and his monthly travel expenses from Bengaluru to Chennai and back every week end to a tune of Rs.10,000/- per month. He also states several other expenses in his counter statement.

Based on the admission in the counter statement, it is clear that the respondent would not spend for his dental clinic but for his income from it. When he is capable of spending for his clinic to a tune of Rs.20,000/- approximately, the presumption arises is that the income should be atleast five times of the expenditure. Since the respondent has not disclosed his true income from the dental clinic, this Court has to necessarily presume that the respondent is getting benefits to a tune of Rs.80,000/- per month atleast. The exact income and expenditure has to be proved by the respondent during the course of main case.

Thus, consolidating all the above aspects, an inference is drawn that the respondent is earning a sum of Rs.1,50,000/- per month. The contention of the respondent that the petitioners are holding his huge money and jewels could not be taken in to account as on date as they are in papers. The respondent has to necessarily hand over the savings amount and other benefits in the name of the second petitioner such that it could be accounted. Till the respondent holds them, they cannot be accounted towards maintenance. The contentions of the respondent that his father is taking care of his expenses are also not proved through any documents such as bank transfers. More particularly the respondent has not denied that the petitioners have independent income. Though the

main claim of the petitioners is still pending, this Court considers that the petitioners are entitled for interim relief though not as prayed for but to a reasonable extent till the disposal of the main case.

Consolidating all the above facts and circumstances, this Court considers that a sum of Rs.20,000/- each to the petitioners as interim maintenance would be reasonable for time being till the date of disposal. Therefore this Court fixes the interim maintenance as Rs.40,000/- in all payable by the respondent to the petitioners with effect from 1.10.2018 till the disposal of the main case."

10.In the opinion of this Court, the reasoning given by the Family Court does not suffer any serious infirmity, inasmuch as Udhaya Saravanan has failed to place before the Family Court, his correct income from the software company, where he is supposed to be working. The fact remains that, Udhaya Saravanan has a separate clinic in Chennai and also engages the services of junior dentists to run the show.

11.In such view of the matter, this Court does not find any infirmity in the order dated 18.02.2019, passed by the Principal Family Court, Chennai in M.P.No.957 of 2018 in M.C.No.66 of 2018. In the result, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

mkn

To

The Principal Judge,
Family Court, Chennai.

+1cc to Mr.R.Amizhthu, Advocate, S.R.No.46622

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BP (CO)
RRS (08/07/2019)