

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C.No.987 of 2018
and
Crl.M.P.No.11550 of 2018

M.Kumaran

...Petitioner

vs.

Master K.Rahul, Minor
rep.by his mother and natural
guardian S.Vasanthi

...Respondent

Prayer: Petition filed under Section 397 r/w 401 of Cr.P.C. against the order dated 02.07.2018, passed by the IV Additional Family Court, Chennai, in M.C.No.408 of 2015.

For Petitioner : Mr.S.Manohar

For Respondent : M/s.Mission Legal
Mr.Ramesh Ganapathy

O R D E R

Challenging the order dated 02.07.2018, passed by the IV Additional Family Court, Chennai, in M.C.No.408 of 2015, this criminal revision case is focussed.

2.The respondent being the minor child of the revision petitioner filed M.C.No.408 of 2015, under Section 125 of Cr.P.C., before the IV Additional Family Court, Chennai, seeking maintenance. Whereupon, the trial Court, after conducting enquiry and hearing both sides, awarded maintenance at the rate of Rs.10,000/- per month. Being aggrieved by the said order, this revision is focussed by the father of the respondent/minor child, on various grounds, the gist of them would run thus:-

The Family Court erred in passing an order merely on the basis of its discretion, without any basis or evidence on record. The lower Court, inspite of finding that the father and mother are equally responsible for the child's welfare and that the mother of the child was also a Central Government employee, went wrong in directing the petitioner to pay a monthly maintenance of Rs.10,000/- for the maintenance of the respondent. The Family Court failed to appreciate that both parents are entitled to educational and medical reimbursement for their children and therefore, the findings that the minor was requiring expenses every month to the extent of Rs.20,000/-, is without any basis. The Family Court failed to see that it was the mother of the respondent, who is preventing the minor boy to unite with his father. The lower Court failed to take into consideration that it was the wife, who neglected to look after the family and deserted the family and therefore, the petitioner is not liable to pay any maintenance. The order passed by the Family Court is against the provisions of Sec.125 of Cr.P.C. The Court below erred in awarding Rs.10,000/-, without taking into consideration the endorsement made by the petitioner agreeing to pay Rs.6,500/-p.m. as maintenance. The Family Court has not afforded proper opportunity to the petitioner to contest the case by way of cross-examining the witnesses and adducing his own evidence.

3.The point for consideration is as to whether the lower Court, after considering the evidence awarded maintenance or simply passed such order by non-application of mind on the facts and figures placed before it.

4.The learned counsel for the revision petitioner, placing reliance on the grounds of revision, would develop his argument to the effect that the wife of the petitioner being a Central Government employee, having power as well as financial resources, neglected to have cohabitation with the revision petitioner and as such, she has not made out a case before the Family Court that the husband neglected to maintain her and the child; in the counter itself, the revision petitioner spelt out that he was ready and willing to take back his wife and child and hence, he cannot be mulcted with the liability to pay monthly maintenance. He would further contend that the maintenance awarded is also excessive.

5.This is a different case, in which, the husband, even by way of defence, could not utter out even a single sentence as

against his wife that she was having some offensive attitude on her part in staying away from him and this Court has taken note of the same. What are all the husband, by way of defence, would put forth against his wife was that she of her own accord had chosen to stay away from him. The wife has come forward with a clear case that she faced cruelty at the hands of the revision petitioner/husband. She also makes accusation against her husband that he is a man of irresponsible person, as he has not showed love and affection towards her or the child and also he has not extended any help for the smooth functioning of the family and totally he does not have interest in the matrimonial life. Even though she expected the husband to come and take back her with the child, after she delivered the male child and she was staying with her father, there was no positive response from the petitioner/husband.

6.The Court below, taking into consideration the rival contentions raised on both sides found that the primary duty is upon the father to bring the child and its duty to give proper growth to the child and that the respondent has not stated anything as to whether he is contributing to the development of the child. Taking into consideration the over all facts and circumstances of the case, the lower Court awarded a sum of Rs.10,000/- payable by the petitioner herein to the minor child.

7.A perusal of the records would go to show that the revision petitioner is working as Superintendent in the Income Tax Department and drawing a monthly salary of Rs.70,000/- per month. Similarly the mother of the respondent is a Central Government employee and is getting a decent salary. The duty and responsibility to bring the child is the paramount duty of the parents and when both the parents are working and capable of earning, both should shoulder the responsibility. It is evident from the records that the child is being taken care of by the mother only and the petitioner herein, being the father of the respondent, has not at all contributed anything to the betterment of the child. Since the respondent is a young boy, he requires more attention and also financial assistance at all stages of his growth. Because of the conflict between the revision petitioner and his wife, the child should not be allowed to suffer. Furthermore, in the present day trend of life, a child requires a lot of money towards medical and educational expenses, apart from food, clothing and sheltering. Therefore, taking into consideration the overall facts and circumstances of the case and the age of the respondent, who has to cross so many stages in his life, and also taking into consideration the financial position of the revision petitioner, who being a Central Government employee, the lower Court has awarded a sum of Rs.10,000/- payable by the revision petitioner herein to the respondent. In fact, this Court is of the view

that the amount of Rs.10,000/- awarded by the lower Court is a very reasonable one and therefore, this Court does not find any ground to interfere with the order passed by the Court below.

In fine, the criminal revision case is dismissed and the order dated 02.07.2018, passed by the IV Additional Principal Judge, Chennai, in M.C.No.408 of 2015, is confirmed. Connected miscellaneous petition is dismissed.

Msk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The IV Additional Principal Judge,
Family Court,
Chennai.

Copy to :-

The Section Officer,
Criminal Section,
High Court,
Madras - 104.

+1cc to Mr.Ramesh Ganapathy, Advocate, S.R.No.352
+1cc to Mr.S.Manohar, Advocate, S.R.No.532
+1cc to the Government Pleader, S.R.No.

Cr1.R.C.No.987 of 2018

KAN(CO)
KAK(19/02/2019)