

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.344 of 2019 and
CrI.M.P.No.4748 of 2019

Jagan Soosai @ Jagan.S

...Petitioner/Respondent

-Vs-

1. Christina Rafya
2. Minor Nicole Jessica
3. Noelle Faith

represented by mother & natural guardian
i.e.1st respondent.

...Respondents/Petitioner

This Criminal Revision case is filed under Sections 397 read with Section 401 of Cr.P.C. to call for the entire records and set aside the ex-parte order dated 21.02.2019, in respect of M.P.No.930 of 2018 in M.C.No.47 of 2014 on the file of the learned V Additional Principal Family Judge, Chennai.

For Petitioner : Mr.R.Sreerangan

For Respondents: Mr.J.Saravanavel

O R D E R

The petitioner is husband, 1st respondent is wife and respondents 2 & 3 are their children. The respondent/wife has filed a petition under Section 125 of Cr.P.C before the Family Court, Chennai, which was taken on file in M.C.No.47 of 2014.

2 Pending the above maintenance case, the respondents have filed a miscellaneous petition seeking interim maintenance. The learned V Additional Principal Judge, Family Court, Chennai, since the petitioner did not appear before the Court, has set him as ex-parte and by order dated 21.02.2019 awarded a sum of Rs.10,000/- to each of the respondents i.e. totally Rs.30,000/- p.m. as interim maintenance to the respondents, against which, husband is before this Court with the present criminal revision case.

3 According to the learned counsel for the petitioner, the petitioner was set exparte on 24.01.2019 and ordered interim maintenance on 21.02.2019. On the date of passing of the interim order of maintenance, the petitioner/husband has filed a petition in M.P.No.171 of 2019 to set aside the exparte order dated 24.01.2019. The learned Judge, instead of passing order in

the above miscellaneous petition, has passed an order of interim maintenance, which is not in accordance with law. Further the petitioner's average monthly income is only Rs.40,000/- p.m., but, the Court below assuming that the petitioner is drawing more than Rs.3.00 lakhs, has awarded Rs.30,000/- as interim maintenance, which is highly excessive and warrants serious interference.

4 According to learned counsel for the respondents, earlier, the petitioner was set exparte in the main case itself and maintenance was ordered, but subsequently, the petitioner filed petition to set aside the ex-parte order and the Court below has also without any condition has set aside the ex-parte order. The maintenance case was filed in the year 2014 and since there was no improvement in the case, the respondents filed miscellaneous petition seeking interim maintenance. The learned Principal Judge, considering the fact that the case is pending from the year 2014 and the petitioner is earning a handsome salary, but, failed to maintain his wife and children, who have no means to maintain themselves, has rightly awarded maintenance of Rs.10,000/- to each of the respondents, which does not call for any interference.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 It is seen that relationship between the parties and paternity of children are not disputed by both the parties. The maintenance case in M.C.No.47 of 2014 filed by the respondents is pending from the year 2014 and the petitioner/husband filed his counter in that case only after the lapse of 4 years i.e. in 2018. Proceedings under Section 125 of Cr.P.C. is only summary in nature, but, the same is pending for more than 4 years. Since the petitioner/husband is earning handful salary, but, has failed to maintain his wife and children, the respondents, who have no sufficient means to maintain themselves had filed miscellaneous petition, seeking interim maintenance. The Family Court, has awarded Rs.30,000/- to the respondents as interim maintenance. It is seen that a petition for divorce is also pending and the amount awarded by the Court below is only an interim arrangement. Under these circumstances, this Court does not find any perversity in the order impugned in this revision. The petitioner/husband can very well establish his case in the main case. However, it is contended by the learned counsel for the petitioner that the Court below instead of deciding the petition filed to set aside the exparte order, has ordered interim maintenance. It is also stated by the learned counsel for the respondents that the petition in M.P.No.172 of 2019 filed by the respondents seeking direction to the petitioner/husband to pay the arrears is also pending. It is stated that the maintenance case is posted before the Family

Court on 02.05.2019. Therefore, the Court below is directed to decide both the miscellaneous petitions in M.P.No.171 & 172 of 2019 on the same day i.e. 02.05.2019 or preferably within a period of one week from the date of receipt of a copy of this order without fail. Both the parties are directed to appear before the Court below on 02.05.2019 without fail.

7 With the above observations and direction, this criminal revision case is dismissed. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-II)

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Sub-Assistant Registrar

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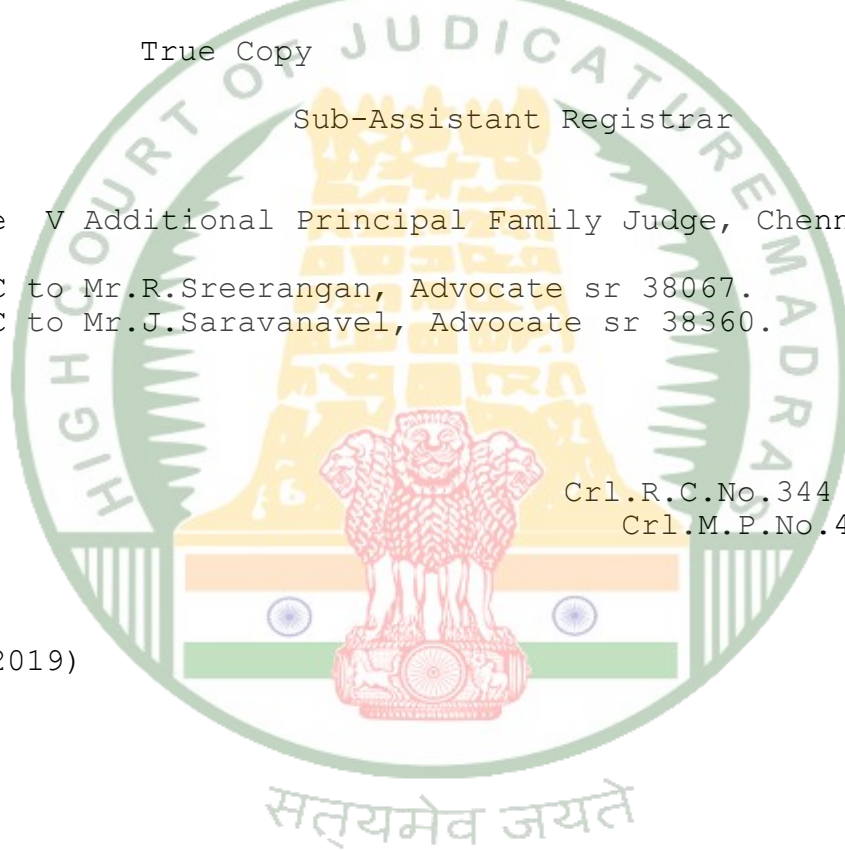
1.The V Additional Principal Family Judge, Chennai.

+1 CC to Mr.R.Sreerangan, Advocate sr 38067.

+1 CC to Mr.J.Saravanel, Advocate sr 38360.

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NRJK (CO)
SP (25/04/2019)



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