



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.07.2019

CORAM
THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Cr1.R.C.No.588 of 2019

S.Suresh
S/o.Late Mr.Subramani

... Petitioner

-Vs-

1. Mrs.S.Malathia @ Usha
2. Selvi Guhasvethaa (Minor)
3. Selvi Tapasvi (Minor)

Rep. by her mother, the first respondent herein
residing at Royal Spring Apartments
Flat No.G1, Annai Theresa Street,
Venkatesan Nagar, 7/10, GKM Colony,
Chennai-600 082.

.. Respondents

Criminal Revision Petition filed under section 397 r/w 401 of the Code of Criminal Procedure to set aside the order dated 08.05.2019 passed in M.C.No.61 of 2015 by the VII Additional Judge of Family Court, Chennai.

For Petitioner : Mr.S.Guru Moorthy

For Respondents: Mr.K.Chandran

O R D E R

This Criminal Revision has been filed seeking to set aside the order dated 08.05.2019 passed in M.C.No.61 of 2015 by the VII Additional Judge of Family Court, Chennai.

2. For the sake of convenience, the petitioner and the respondent will be referred to by their name.

3. It is the case of Malathi that she got married to Suresh on 20.08.1996 and through the wedlock, they begot two children viz., Guhasvethaa and Tapasvi. It is her allegation that Suresh failed to maintain her and therefore, she filed M.C.No.61 of 2015 under Section 125 Cr.P.C. before the Family Court, Chennai against Suresh. On notice, Suresh entered appearance and disputed the very marital relationship with Malathi. However, he did not dispute the paternity of the two children born to her. Malathi examined herself as P.W.1 and marked Ex.P1 to Ex.P13. No witness was examined on behalf of Suresh. After considering the evidence on record and hearing on either side, the trial Court by order dated 08.05.2019 in M.C.No.61 of 2015



has awarded maintenance of Rs.7,000/- p.m. each totaling to a sum of Rs.21,000/- p.m. (for Malathi and her two children) payable from 16.02.2015, challenging which, Suresh has filed the present revision.

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4. Heard Mr.S.Guru Moorthy, learned counsel appearing for Suresh and Mr.K.Chandran, learned counsel appearing for Malathi.

5. The learned counsel for Suresh submitted that Malathi was already got married to one Muthukrishnan and that she got divorce from him only on 31.10.1996 before the I Additional Family Court, Chennai and therefore, her assertion that she got married to Suresh on 20.08.1996 cannot be true.

6. On the contrary, the learned counsel for Malathi submitted that after living with Malathi for 18 years and begetting two children, it is not open to Suresh to dispute the very marital status.

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

8. In Girish Kumar Suneja Vs. Central Bureau of Investigation, (2017) 14 SCC 809, the Supreme has held that the revisional jurisdiction is only an entitlement and not the right. At this juncture, it is relevant to extract Paragraph No.27 of the above said decision:

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings."

9. This Court carefully perused the impugned order. This ground was raised even in the trial Court and the trial Court has negated the same by holding as follows:

"Though the respondent has disputed that, she has not dissolved her earlier marriage he has not disputed the birth of children. In such circumstances the cohabitation and the marital relationship with the 1st petitioner and the respondent was established and hence, this Court decided that she entitled for maintenance."



10. Even before this Court, Suresh has not disputed the paternity of two children.

11. In such view of the matter, there is no illegality or perversity in the order dated 08.05.2019 passed by the Family Court, Chennai, warranting interference in the revisional jurisdiction.

12. The learned counsel for Suresh contended that Suresh has to take care of his aged mother and has to incur huge medical expenditure.

13. Taking into consideration these factors, this Court is of the view that the interests of justice will be served if the maintenance amount is reduced from Rs.7,000/- p.m. to Rs.5,000/- p.m. in respect of Malathy alone.

14. The learned counsel for Suresh submitted that the date of birth of Guhasvethaa is 30.07.1999 and therefore, she may not be entitled for maintenance after she attained majority.

15. Refuting the contention, the learned counsel for Malathy submitted that the maintenance petition was filed when Guhasvethaa was a minor and hence, the arrears of maintenance has to be paid by Suresh till she attained majority.

16. There appears to be sufficient force in the submission of the learned counsel for Malathi.

17. In view of the above, this Criminal Revision case is partly allowed. Suresh shall deposit the arrears of maintenance at the rate of Rs.5,000/- p.m. for Malathi and Rs.7,000/- p.m. for Tapasvi calculated from 16.02.2015 till July 2019 and Rs.7,000/-p.m. for Guhasvethaa calculated from 16.02.2015 till she attained the age of majority before the trial Court within a period of eight weeks from the date of receipt of a copy of this order. In the event of Suresh depositing the arrears amount, Malathi will be entitled to withdraw the same. From the month of August 2019 onwards, Suresh shall continue to deposit the monthly maintenance of Rs.12,000/- p.m. (Rs.5,000/- p.m. for Malathi and Rs.7,000/-p.m. for Tapasvi till she attain the age of majority) before 10th of every English calendar month either by depositing before the trial Court or crediting into the bank account of Malathi.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

mk



To

The VII Additional Judge,
Family Court, Chennai.

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+2ccs to Mr.S.Gurumoorthy, Advocate, S.R.No.63563

+1cc to Mr.K.Chandran, Advocate, S.R.No.63064

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EV (CO)

RRS (29/07/2019)