

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.R.C.No.799 of 2019
and Cr1.M.P.No.11636 of 2019

R.Babu .. Petitioner/Respondent

Vs.

1. S.Srimathi

2. Master S.Madhu Varshan .. Respondents/Petitioner

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the judgment and order dated 07.05.2018 passed in
F.C.M.C.No.48 of 2016 on the file of the Family Court, Vellore.

For Petitioner : Mr.S.Siva Kumar
for M/s. Law Square
For Respondents: Mr.M.Sathish Kumar

ORDER

This petition has been filed seeking to set aside the
judgment and order dated 07.05.2018 passed in F.C.M.C.No.48 of
2016 on the file of the Family Court, Vellore.

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

3. The facts of the case in a nutshell are as under:

3.1 Babu got married to Srimathi on 26.02.2012 and they
have a child viz., Madhu Varshan, who is now aged about six
years. On account of matrimonial discord, the spouses got
estranged. Srimathi filed F.C.M.C.No.48 of 2016 under Section
125 Cr.P.C. before the Family Court, Vellore, against Babu. On
notice, Babu entered appearance and contested the claim.

3.2 Before the Trial Court, Srimathi examined herself as
PW1 and marked seventeen exhibits. Babu examined himself as RW1
and no exhibit was marked on his behalf.

3.3 After considering the evidence on record and hearing either side, the Trial Court gave a finding that Babu had neglected to maintain his wife and child. Coming to the quantum of maintenance, the Trial Court held that Srimathi was gainfully employed as Nurse in CMC, Vellore and therefore, the claim of maintenance for her was rejected. However, the Trial Court, by order dated 07.05.2018 in F.C.M.C.No.48 of 2016, awarded maintenance of Rs.6,000/- per month, for the minor child Madhu Varshan calculated from the date of filing of the petition and also Rs.30,000/- per year, towards education expenses of the child.

3.4 Challenging the order dated 07.05.2018, Babu has preferred the present revision petition with a delay of 311 days and therefore, filed Crl.M.P.No.8255 of 2019 under Section 5 of the Limitation Act. This Court condoned the delay on 08.08.2019, pursuant to which, the revision petition has been numbered and is posted today.

4. Heard Mr.S.Siva Kumar, learned counsel for Babu and Mr.M.Sathish Kumar, learned counsel for Srimathi.

5. At the outset, it is apropos to state here that a three Judge Bench of the Supreme Court, in Girish Kumar Suneja Vs CBI¹, has delineated the revisional jurisdiction as under:

"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. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 of the

1 (2017) 14 SCC 809

Cr.P.C."

6. In support of her plea that Babu was having affairs with several women, Srimathi has filed photographs, which has been marked as Ex-P15. The Trial Court has considered all these aspects and has given a finding that Babu had neglected to maintain his wife and child.

7. This Court does not find any infirmity in the said finding. However, the learned counsel for Babu submitted that Babu is earning only a sum of Rs.8,000/- as X-Ray Technician and he has his aged parents to take care of. It is also seen that Babu and his family members were prosecuted in C.C.No.121 of 2013 under Section 498-A IPC and were acquitted by the Trial Court.

8. Taking all these facts into consideration, this Court is of the view that interests of justice will be subserved if the maintenance of Rs.6,000/- is reduced to Rs.4,500/- per month payable from the date of filing of the petition in F.C.M.C.No.48 of 2016 and it is ordered accordingly. The arrears of maintenance calculated at the rate of Rs.4,500/- per month from the date of petition shall be paid to Srimathi after adjusting the amounts already paid, within a period of four weeks from the date of receipt of a copy of this order. The sum of Rs.30,000/- that has been ordered by the Trial Court to be paid annually for the education expense of the minor child Madhu Varshan is maintained.

In the result, this revision petition is partly allowed by reducing the monthly maintenance of Rs.6,000/- ordered by the Trial Court to Rs.4,500/- per month. Connected M.P. is closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

nsd

To

1.The Judge, Family Judge,
Vellore.

+1cc to Mr.S.Siva Kumar Advocate, S.R.No.72063

SVI (CO)

CB(27/09/2019)

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