

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.723 of 2019
and Crl.M.P.No.10098 of 2019

S.Swaminathan .. Petitioner

Vs.

1. S.Ajitha Kumari

2. S.Anchima

3. S.Manchima .. Respondents

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 23.05.2018 passed in M.C.No.411 of 2016 on the file of the IV Additional Family Court, Chennai.

For Petitioner : Mrs.R.Nirmala Devi

For Respondents : Mr.S.Madhusudanan

ORDER

This petition has been filed seeking to set aside the judgment and order dated 23.05.2018 passed in M.C.No.411 of 2016 on the file of the IV Additional Family Court, Chennai.

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 Ajitha Kumari got married to Swaminathan on 30.04.1997 and through their wedlock, they have two children viz., Anchima and Manchima. Anchima was born on 10.02.2000 and Manchima was born on 15.05.2002. Swaminathan was working as a Conductor in the State Transport Corporation. It is alleged that Swaminathan was addicted to liquor and was having some extra-marital affair, on account of which, the couple got estranged.

3.2 Ajitha Kumari filed M.C.No.411 of 2016 before the IV Additional Family Court, Chennai, under Section 125 Cr.P.C., claiming maintenance for herself and her two daughters. Swaminathan entered appearance and contested the case.

3.3 Ajitha Kumari examined herself as PW1 and marked Exs-P1 to P4. Swaminathan examined himself as RW1 and marked Exs-R1 and R2.

3.4 After considering the evidence on record and hearing either side, the Trial Court, by order dated 23.05.2018 in M.C.No.411 of 2016 has directed Swaminathan to pay a sum of Rs.2,000/- each, per month (in total Rs.6,000/-) as maintenance to Ajitha Kumari and her two daughters.

3.5 Challenging the said order, Swaminathan has filed the present criminal revision petition under Section 397 r/w 401 Cr.P.C., with a delay of 283 days, to condone which, he filed Crl.M.P.No.7712 of 2019 in Crl.R.C.No.SR27102 of 2019. This Court condoned the delay and took up the main case for disposal today.

4. Heard Mrs.R.Nirmala Devi, learned counsel for Swaminathan and Mr.S.Madhusudan, learned counsel for Ajitha Kumari.

5. The learned counsel for Swaminathan submitted that Swaminathan attained the age of superannuation and is drawing pension of only Rs.6,500/- per month and therefore, he has no means to pay maintenance.

6. Per contra, the learned counsel for Ajitha Kumari refuted the contentions made by the learned counsel for Swaminathan.

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

8. 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 Cr.P.C."

9. The Trial Court has given the following finding in paragraph No.10 of its judgment:

"10.On the contrary, the respondent produced his bank statement through Ex.R1 wherein he is receiving monthly pension of Rs.6,500/- and apart from that there is no evidence produced to establish that he is having landed properties at his native. On a perusal of Ex.R1 bank statement an amount of Rs.5,00,000/- has been credited to his account during August 2015 i.e., within one month from his retirement. On a further perusal of the said statement would reveal that on 31.08.2017 amount of Rs.5,00,000/- has taken away from RTGS and went to IOB account. Therefore, there would be every possibility of depositing his retirement amount and there would be possibility of further income on the head of interest on deposit and hence he is having additional income. The respondent in his evidence have stated that he is spending Rs.1,300/- for rent. However, in his counter he has stated that he is having his own house at his native at Viyannur, Kanyakumari District and wanted the petitioners to come and join with him. So he confronted his above evidence through the contents of the counter".

10. It cannot be stated that the above finding of the Trial Court is perverse or illegal. That apart, the Trial Court has ordered maintenance of only Rs.2,000/- per month for each of them, which, in the opinion of this Court, cannot be said to be excessive, given the today's cost of living.

11. In such view of the matter, this Court has no hesitation to hold that the impugned judgment and order passed by the Trial Court does not suffer any illegality or perversity warranting interference by this Court under Section 397 r/w 401 Cr.P.C.

In the result, the criminal revision petition is dismissed as being devoid of merits. Connected Crl.M.P. is closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

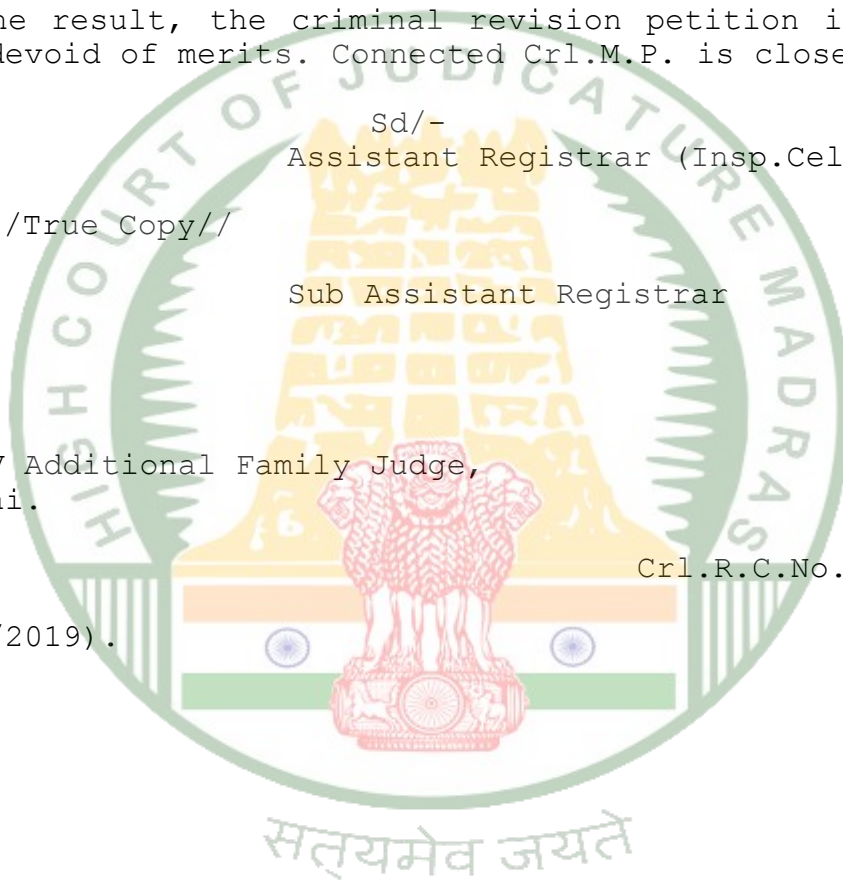
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To

1. The IV Additional Family Judge,
Chennai.

Crl.R.C.No.723 of 2019

RR(CO)
SSM(09/09/2019).



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