

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.RC.No.758 of 2019

Dharmalingam
W/o.Ponnusamy

.. Petitioner/Respondent

Vs

1. Easwari
W/o.Dharmalingam

2. Minor Moni
S/o.Dharmalingam

3. Minor Logavani
S/o.Dharmalingam

* R2 & R3 Minor rep. By Guardian mother
1st petitioner Easwari

.. Respondents/Petitioner

Criminal revision preferred under Section 397 read with Section 401 of Cr.P.C. to set aside the order dated 01.11.2018 passed in M.C.No.9 of 2018 on the file of the Family Court, Namakkal.

For Petitioner : Mr.M.Selvam

For Respondents : Mr.T.Dharmaraj

O R D E R

This Criminal Revision has been preferred to set aside the order dated 01.11.2018 passed in M.C.No.9 of 2018 on the file of the Family Court, Namakkal.

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

3. Dharmalingam got married to Easwari in the year 1994 and through the wedlock, they have two children viz., Moni and Logavani. On account of matrimonial dispute, the spouses got estranged resulting in Easwari initiating M.C.No.9 of 2018 before the Family Court under Section 125 Cr.P.C seeking maintenance for herself and her two children. On notice, Dharmalingam entered appearance and contested the case. Easwari examined herself as P.W.1 and marked Ex.P1 & Ex.P2. Dharmalingam examined himself as D.W.1 and marked Ex.D1 to Ex.D7. After considering the evidence on record, the trial

Court, by order dated 01.11.2018 in M.C.No.9 of 2018 has dismissed the claim of maintenance to Easwari, however, has ordered maintenance of Rs.3,000/- p.m. each (totally Rs.6,000/- p.m.) to two children, challenging which, Dharmalingam is before this Court.

4. Heard Mr.Selvam, learned counsel for Dharmalingam and Mr.T.Dharmaraj learned counsel for Easwari.

5. The learned counsel for Dharmalingam contended that Dharmalingam has to maintain his aged mother and that he does not have sufficient means to pay the maintenance amount. He further contended that Dharmalingam has paid the school fee for his two children.

6. Per contra, the learned counsel for Easwari refuted the contention.

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. While exercising powers under Section 397 r/w 401 Cr.P.C, this Court cannot act as an Appellate Court. In this case, the trial Court has appreciated the evidence adduced by the parties and has held that Easwari will not be entitled to any maintenance and that she has to work out her remedy in the divorce proceedings that was pending before the Family Court. As regards two children, the trial Court has taken into

consideration the fact that Dharmalingam has not denied or disputed their paternity. Therefore, Dharmalingam has a legal and moral duty to maintain his two children.

10. Coming to the quantum of maintenance, the trial Court after taking into consideration the source of income of Dharmalingam, has ordered to pay a sum of Rs.3,000/- per month each (totally Rs.6,000/- p.m.), which in the opinion of this Court, cannot be said to be excessive in the present cost of living.

11. Under such circumstances, this Court does not find any infirmity in the order passed by the trial Court warranting interference. Accordingly, this Criminal Revision case fails and the same is dismissed.

12. The learned counsel for the petitioner sought time to deposit the arrears of maintenance.

13. Eight weeks time is granted to the petitioner from the date of receipt of a copy of this order to deposit the arrears of maintenance.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mk

To

The District Judge,
The Family Court,
Namakkal.

+1cc to Mr.M.Selvam, Advocate sr.69412
+1cc to Mr.T.Dharmarajan, Advocate sr.69196

CRL.R.C.No.758 of 2019

vgi(co)
nr 30/09/2019