

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1211 of 2017

Hemanandhan @ Hemakugan

...Petitioner/Respondent

-Vs-

1. H.Nalini @ Sathiya

2. H.Monisha

...Respondents/Petitioners

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order dated 19.07.2017 passed in F.C.M.C.No.19 of 2014 on the file of the Family Court, Vellore District.

For Petitioner : Mr.Durai Gunasekaran

For Respondents : Mr.M.V.Raja

ORDER

The petitioner is husband, 1st respondent is wife and 2nd respondent is s minor female child. The first respondent has filed a petition under Section 125 of Cr.P.C. seeking maintenance before the Family Court, Vellore, which was taken on file in F.C.M.C.No.19 of 2014 and the learned Judge, after hearing both the parties, by an order dated 19.07.2017, granted maintenance at Rs.5,000/- to 1st respondent/wife and Rs.3,000/- to 2nd respondent/child. Aggrieved against the same, the husband is before this Court.

2 According to the learned counsel for the petitioner/husband the petitioner studied only 7th std., whereas, the first respondent/wife is B.Com Graduate and is working in Bangalore and also earning sizable income. But, the petitioner at the time of granting maintenance by the Family Court, was earning only Rs.7,000/- per month. The Family Court has awarded maintenance, more than his earnings, and hence is liable to be set aside.

3 According to the learned counsel for the respondents, respondent is a earning person and he is liable to maintain his wife and child. The Family Court after taking into consideration all the facts, had rightly awarded maintenance, which itself is very less and the same need not be modified.

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

5 It is an admitted fact that the petitioner is only 7th std. and the first respondent is a B.Com graduate. The learned Judge, after considering all the facts only had awarded maintenance. Admittedly the petitioner/husband has not produced any proof for the employment of the wife and income, like wise, the respondent/wife has also not produced any proof of income of the petitioner/husband. Petition under Section 125 of Cr.P.C. can be filed by the wife, only if the husband having sufficient means neglect or refuses to maintain his wife, who is unable to maintain herself. In this case, the first respondent/wife, being a B.Com graduate could earn and there is no evidence on records to show she is unable to maintain herself. Under these circumstances, this Court is inclined to modify the order of the Family Court.

6 Accordingly, the maintenance of Rs.5,000/- granted to the wife is hereby set aside. However, the petitioner/husband is bound to pay maintenance to his minor female child. There is no proof that there is some property stand in the name of the child and there is regular income from the same out of which, the child able to maintain itself. Hence considering the cost of living prevailing situation and educational expenses, the maintenance at Rs.3,000/- granted by the Family Court to the minor child towards maintenance is not sufficient and the same is enhanced to Rs.5,000/- per month. The petitioner is directed to pay the above maintenance to the child from the date of filing of maintenance case. The criminal revision case is partly allowed with the above terms.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

The Judge,
Family Court,
Vellore District.

+lcc to Mr.Durai Gunasekaran, Advocate Sr.23986

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