

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16.10.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.974 of 2019 and
Crl.M.P.No.13707 of 2019

A.Velmurugan

..Petitioner/Respondent

Vs.

V.Sabitha

..Respondent/Petitioner

Prayer: This Criminal Revision Petition is filed, under Section 397 read with 401 of Cr.P.C, to set aside the order, dated 13.08.2019, made in M.P.No.516/2019 in M.C.No.316/2018, by the V Additional Family Court, Chennai.

For Petitioner : Mr.V.Venkatasamy
For Respondent : Mr.R.Bakayaraj

ORDER

This Criminal Revision Petition has been filed, seeking to set aside the order, dated 13.08.2019, passed in M.P.No.516/2019 in M.C.No.316/2018, by the learned V Additional Family Court, Chennai.

2 The facts of the case is that the revision petitioner is the husband of the respondent. The respondent/wife had filed a petition in M.C.No.316/2018, under Section 125 of Cr.P.C., seeking maintenance from the petitioner/husband. When, the revision petitioner had filed a counter and when the matter had been listed for filing of proof Affidavit by the respondent/wife, the revision petitioner had filed a petition in M.P.No.516/2019, under Section 151 of Cr.P.C., seeking to decide the maintainability of the petition in M.C.No.316/2019. In and by the impugned order, the learned Judge had rendered a finding that the petition had been filed to avoid the trial and finding that the petition had been filed merely after one year of filing M.C.No.316/2019 and that it was filed only for the purpose of delaying the trial, had dismissed the petition, stating that the M.C.No.316/2019 is maintainable and also directed the revision petitioner/husband to pay a sum of Rs.10,000/- to the

respondent/wife towards costs and expenses. Hence, the present revision petition has been filed by the petitioner/husband.

3 Heard both sides.

4 The learned counsel for the petitioner would submit that the petition in M.C.No.316/2019 filed under Section 125 of Cr.P.C., is not maintainable since, the respondent/wife has not satisfied the ingredients of Section 125 of Cr.P.C., and that the respondent/wife is in employment in a leading software company and drawing a salary of more than Rs.60,000/- per month and there was no pleading in the petition that she could not maintain herself and thereby, in the absence of the pleadings, the petition filed under Section 125 of Cr.P.C., seeking for maintenance is not maintainable.

5 On the other hand, the learned counsel for the respondent/wife would submit that the revision petitioner had filed the petition under Section 151 of Cr.P.C., seeking to decide the maintainability only with an oblique motive of protracting the trial. He would submit that the respondent/wife had filed the petition as early as on 27.07.2018 and the revision petitioner/husband had filed his counter on 27.12.2018 and when the respondent/wife had filed a proof affidavit on 26.06.2019, the revision petitioner/husband had filed the petition under Section 151 of Cr.P.C., questioning the maintainability of the petition in M.C.No.316/2019 and the learned Trial Judge, had rightly finding that the matter with regard to the income of the both parties can be looked by the court only at the time of trial and the revision petitioner had filed a petition under Section 151 of Cr.P.C., seeking to decide the maintainability only with an oblique motive of protracting the trial, dismissed the petition, imposing a cost of Rs.10,000/-. He would further submit that even the present revision petition has been filed only with an intention to delay the progress of the maintenance case and would seek for dismissal of the revision petition.

6 I have gone through the orders passed by the learned Trial Judge.

7 The learned Trial Judge has rightly pointed out that the source of income of both parties can be looked into by the Court only at the time of trial. This Court is able to see that the petition has been filed only with an intention of protracting the case and delaying the progress of the trial. Further, I do not find any infirmity in the impugned order passed by the learned Trial Judge, however, this Court is of the opinion that the imposition of cost of Rs.10,000/- is on the higher side.

8 In view of the above, this Criminal Revision Petition is dismissed. However, the imposition of cost of Rs.10,000/- is modified and reduced to Rs.5,000/- (Rupees Five Thousand Only). The Trial Court shall complete the proceedings in M.C.No.316/2018 and pass orders within a period of three months from the date of receipt of a copy of this order. The revision petitioner is directed to pay a cost of Rs.5,000/- to the respondent/ wife, before the Trial Court on the next hearing date. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

The V Additional Principal Judge,
Family Court, Chennai.

+1cc to M/s.V.Venkkatasamy, Advocate SR.No.86334

+1cc to Mr.R.Bakyaraj, Advocate Sr.No.86303

AKM/28.11.19 /3P-5C/

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