



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1194 of 2018

M.Dhanamjaya

...Petitioner

-Vs-

M.Jayashree @ Padma

...Respondent

This Criminal Revision Petition is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order dated 23.04.2018 and made in M.P.No.515 of 2017 in M.C.NO.137 of 2013 on the file of the VII Additional Family Court, Chennai, and allow the above criminal revision case.

For Petitioner : Mr.N.Sankaravadivel

For Respondent : Mr.R.Ravi

O R D E R

The petitioner is husband and respondent is wife. The respondent/wife has filed a maintenance case in M.C.No.137 of 2013 seeking maintenance before the learned VII Additional Principal Judge, VII Additional Family Court, Chennai. Pending maintenance case, the wife has filed a miscellaneous petition in M.P.No.515 of 2017, seeking interim maintenance and alternative accommodation. The learned Judge, by order dated 23.04.2018, has awarded a sum of Rs.5,000/- towards maintenance. Aggrieved against the order of maintenance, the husband has filed the present criminal revision case before this Court.

2 The learned counsel for the petitioner would submit that petitioner had filed a petition for divorce in H.M.O.P.No.4 of 2009 and the Senior Civil Judge, Srikalahasti, by order dated 15.04.2010 granted decree of divorce, on the ground of desertion. The respondent has filed an appeal against the decree of divorce, before the High Court of Hyderabad, and the same is pending. The respondent is resident of Srikalahasti and all the proceedings under the divorce petition had been sent to respondent only to the address in Srikalahasti and therefore, the Family Court, Chennai, does not have jurisdiction to conduct the maintenance case filed by the respondent. Further, in the divorce proceedings, the respondent/wife has filed an interlocutory application under Section 24 of Hindu Marriage Act and got interim maintenance at Rs.750/- p.m., suppressing the above facts, the respondent/wife has filed the present maintenance case. The learned Judge, failed to consider the above facts and ordered interim maintenance at Rs.5,000/- p.m., which warrants interference.

3 The learned counsel for the respondent/wife would submit that the respondent is now working as maid in Chennai and fighting for her livelihood. The respondent has filed an appeal



against the decree of divorce obtained by the petitioner/husband. The petitioner did not even pay the maintenance at Rs.750/- as ordered by the Civil Judge, Srikalahasthi. The respondent/wife, being an uneducated women, is struggling to meet her day to day needs. Therefore, she filed a petition seeking maintenance and the learned Judge has also rightly awarded maintenance at Rs.5,000/-, which does not call for any interference.

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

5 It is seen that the respondent/wife has filed case under Section 125 of Cr.P.C. seeking maintenance in M.C.137 of 2013, in which she also filed a miscellaneous petition seeking interim maintenance. This Court is of the view that the main maintenance case under Section 125 of Cr.P.C itself is summary in nature and hence there cannot be any miscellaneous petition seeking interim maintenance, especially when question of jurisdiction has been revised. The Court below ought to have decided the maintenance case, instead of entertaining the miscellaneous petition seeking interim maintenance. Hence, without touching the merits of the case, the order passed by the VII Additional Family Court, Chennai, dated 23.04.2018 is hereby set aside and the Family Court is directed to dispose of the maintenance case in M.C.No.137 of 2018 within a period of two months from the date of receipt of a copy of this order, without influencing any of the observations made in this order. Both the parties are at liberty to establish their respective case before the Court below, while deciding the maintenance case by the VII Principal Judge, VII Additional Family Court, Chennai.

6 With the above observations and directions, this criminal revision case is disposed of.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The VII Principal Judge,
VII Additional Family Court, Chennai.

Copy to : The Section Officer, Criminal Section,
High Court, Madras.

+1 cc to Mr.N.Sankaravadivel, Advocate Sr.No. 28394
+1 cc to Mr.R.Ravi, Advocate Sr.No. 29372

Cr1.R.C.No.1194 of 2018