

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.1362 of 2018

Puratchipathi

... Petitioner

Vs.

Thilagavathy

... Respondent

PRAYER: This Criminal Revision Case has been filed Under Section 397 r/w 401 of Cr.P.C to set aside the order passed by the learned Family Court Judge, Vellore in F.C.M.C.No.86 of 2017 dated 14.08.2018.

For Petitioner : Mr.A.Vinu Pradha

For Respondent : Mr.M.Rajendran (No Appearance)

O R D E R

This Criminal Revision Case has been filed by the petitioner under Section 397 r/w 401 of Cr.P.C. to set aside the order passed by the learned Family Court Judge, Vellore in F.C.M.C.No.86 of 2017 dated 14.08.2018.

2.The respondent filed a petition against the revision petitioner under Section 125 of Cr.P.C. for maintenance before the Family Court, Vellore in F.C.M.C.No.86 of 2017. The learned Family Court Judge, after enquiry, awarded a sum of Rs.5,000/- per month to the respondent towards maintenance. Aggrieved by the said order, the husband has preferred the present Revision.

3.The learned counsel for the petitioner would submit that the petitioner is only doing work of loading and unloading the goods, packs and parcels in the bus stand and he hardly gets Rs.2/- per load and approximately Rs.250/- per day, in total, he would be able to get only Rs.7,500/-, out of which, he has to pay Rs.5,000/- towards maintenance to his wife, he has to survive himself and also to look after his aged mother. Hence, the order passed by the learned Family Court Judge warrants interference. Accordingly, prays for setting aside the impugned order.

4. Even though notice served to the respondent, none appeared on behalf of her. When the matter came up for hearing on 15.02.2019 also no appearance for the respondent.

5. Heard the learned counsel for the petitioner. Perused the records.

6. The relationship of the parties are not in dispute. Since the respondent refused to live with her husband and she left the matrimonial home without any valid reasons and she has also filed a petition in H.M.O.P.No.91 of 2011 for divorce on the ground of cruelty and desertion, she is not eligible for maintenance. Though the divorce petition was allowed and divorce also granted to the respondent, it is only on the ground of cruelty and not on the ground of desertion.

7. Therefore, it shows that the respondent is not staying with the petitioner and left him with a valid reason. As per Section 125 of Cr.P.C. in the case where the husband has means to maintain himself and neglects or refuses to maintain his wife. The wife who is unable to maintain herself is entitled to get maintenance from her husband.

8. In this case only the quantum of maintenance amount alone is in dispute. The learned Judge without ascertaining the concrete income and earning capacity of the petitioner awarded a maintenance of Rs.5,000/- per month. The learned counsel for the petitioner would also stated that there is no evidence to show that the revision petitioner is running any business or earning the amount to pay the maintenance of Rs.5,000/- to the respondent.

9. As admitted by the learned counsel for the petitioner that the petitioner is not in a position to earn daily and sometimes Rs.7,500/- per month is also not definite, this Court considering the earning capacity of the revision petitioner, inclined to modify the maintenance of Rs.5,000/- to Rs.3,500/-.

10. However, the petitioner is directed to pay the modified amount of Rs.3,500/- to the respondent from the date of filing of the petition in F.C.M.C.No.86 of 2017 till date and also continue to pay a sum of Rs.3,500/- towards future maintenance on or before the 5th of every English Calendar month. The petitioner is also directed to deposit the entire arrears of maintenance if any within a period of three months from the date of receipt of a copy of this order, failing which, the revision petitioner is liable to pay the maintenance as awarded by the learned Family Court Judge in F.C.M.C.No.86 of 2017.

11.With the above direction, this Criminal Revision Case stands partly allowed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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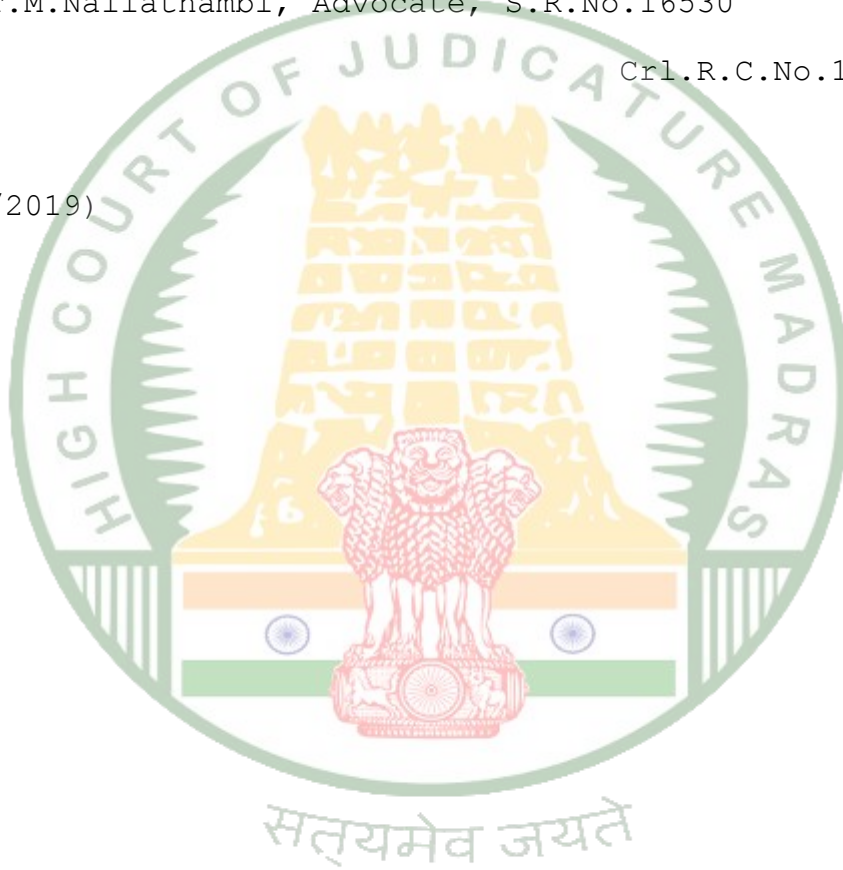
The Family Court Judge, Vellore.

+1cc to Mr.M.Nallathambi, Advocate, S.R.No.16530

Crl.R.C.No.1362 of 2018

AD(CO)

RRS (11/04/2019)



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