

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1388 of 2018
and Crl.MP.No.16145 of 2018

Selvaraju

... petitioner/Respondents

Vs.

1. Kiruthika

2. Minor Arjun

rep by Natural Guardian Kiruthika

..Respondents/Petitioners

Prayer: This Criminal revision is filed under Section 397 r/w.401 of Criminal Procedure Code to set aside the order dated 25.09.2018 made in MC.No.6 of 2016 on the file of the Judicial Magistrate No.1, Kallakurichi.

For petitioner : Mr.V.R.Kamalanathan.

For Respondents : Mr.S.Ramajayam.

O R D E R

This Criminal revision is filed to set aside the order dated 25.09.2018 made in MC.No.6 of 2016 on the file of the Judicial Magistrate, Kallakurichi.

2. The revision petitioner is the husband and the first respondent is the wife and the second respondent is minor son. The first respondent filed petition against the revision petitioner under Section 125 Cr.PC seeking maintenance. The learned Magistrate after hearing both sides awarded a sum of Rs.7,000/-p.m. to the first respondent and a sum of Rs.10,000/-p.m. towards maintenance. Aggrieved against the order of the Magistrate, the revision petitioner is before this Court.

3. The learned counsel for the petitioner would submit that the marriage between the petitioner and the first respondent was solemnized on 27.08.2012 and blessed with one child. The first respondent took the child and left the matrimonial home, out of the best efforts taken by the petitioner, the first respondent refused to come and live with the petitioner. The petitioner went along with the middleman and requested the wife to come and live with him, whereas the wife once again refused to do so. The petitioner filed petition for restitution of conjugal rights in HMOP.No.145 of 2015 and GOP.No.152 of 2015 filed for custody

of the minor child are pending for more than two years without filing any counter, out of the threatening given by the father of the first respondent both the petitions were dismissed as withdrawn by the petitioner. Subsequently, the petitioner filed petition for divorce in HMOP.No.140 of 2017 before the Family Court, Villupuram. Earlier the petitioner is ready and willing to take the wife and the custody of the child by invoking the restitution of conjugal rights and the custody of the child by separate proceedings. The wife left the matrimonial home voluntarily on her own without any valid reasons and not filed the counter in the petition for restitution of conjugal rights for a period of more than two years and refused to live together with the petitioner shows that the first respondent/wife is not entitled to claim any maintenance under Section 125(4) Cr.PC. The learned Magistrate also failed to consider this aspect that the revision petitioner has taken effective steps to take back the wife and child by invoking the provisions under Section 9 of the Hindu Marriage Act and Section 7 of the Guardians and Wards Act. Under these circumstances, the learned counsel prays this Court to set aside the order passed by the learned Magistrate in MC.No.6 of 2016 dated 25.09.2018.

4. The learned counsel for the respondents would submit that the petitioner has not paid any maintenance amount to the respondents. The petition for restitution of conjugal rights in HMOP.No.145 of 2015 filed by the petitioner/husband was also dismissed. Hence, the learned counsel prays this Court to direct the petitioner to pay the arrears of maintenance and monthly maintenance to the respondents and to dismissed the revision filed by the petitioner.

5. Heard the rival submissions made on both sides and perused the materials available on record.

6. The relationship of the parties are not in dispute and the paternity of the child is also not disputed. The petitioner filed petition for restitution of conjugal rights. The first respondent not chosen to file any counter for two years and the petitioner allowed the petition to dismiss as not pressed. Subsequently, the petitioner filed petition for divorce and also for custody of the child. On a perusal of records, it shows that even though the petitioner is working as Assistant Engineer in the Public Works Department and having sufficient means, but the petitioner has not neglected or refused to maintain his wife and child. The petitioner is always ready and willing to take back his wife and child and the first respondent has no evidence to show that the petitioner neglected or refused to pay maintenance to her and to the child. It is needless to mention, at this stage, the HMOP.No.140 of 2017 before the Family Court, Villupuram and the GOP.No.152 of 2015 filed by the petitioner are pending.

7. Considering the fact that the first respondent/wife left the matrimonial home voluntarily on her own without any valid reasons and refused to live together with the petitioner, hence the first respondent/wife is not entitled to claim any maintenance under Section 125(4) Cr.PC. At this stage, the guardian OP is pending and the petitioner is also willing to take the custody of the child and ready to maintain him. Thus, the first respondent is not entitled to get any maintenance from the petitioner under Section 125 Cr.PC. Hence, the order passed by the learned Magistrate in MC.No.6 of 2016 dated 25.09.2018 is liable to be set aside. Now, the first respondent is at liberty to file petition under Section 24 of the Hindu Marriage Act before the competent Court. If any petition is filed under Section 24 of the Hindu Marriage Act, the same may be considered in accordance with law without any inference on the observation made in this revision.

8. In the result, the criminal revision is allowed by setting aside the order made in MC.No.6 of 2016 dated 25.09.2018 on the file of the Judicial Magistrate, Kallakurichi. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate, Kallakurichi.

+1cc to Mr.V.R.Kamalanathan, Advocate, S.R.No.22814

+1cc to Mr.S.Ramajayam, Advocate, S.R.No.23529

Cr1.R.C.No.1388 of 2018

RSI (CO)

RRS (30/04/2019)

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