

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.2641 of 2020

and M.P.No.1587 of 2020

Manikandan

... Petitioner

Vs.

1. Pushpa

2. Minor Harshitha

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order dated 06.11.2019 made in Crl.R.P.No.15 of 2019 on the file of III Additional Sessions Judge, Villupuram @ Kallakurichi confirming the order dated 09.04.2019 made in M.C.No.38 of 2016 on the file of the Judicial Magistrate No.1, Kallakurichi.

For Petitioner : Mr.Ashwin Kumar

for M/s.Sarvabhauman Associates

For Respondents: No appearance

ORDER

This Criminal Original Petition has been filed to set aside the order dated 06.11.2019 made in Crl.R.P.No.15 of 2019 on the file of III Additional Sessions Judge, Villupuram @ Kallakurichi confirming the order dated 09.04.2019 made in M.C.No.38 of 2016 on the file of the Judicial Magistrate No.1, Kallakurichi.

2. The learned counsel for the petitioner submitted that the petitioner is the husband and the first respondent is the wife and the second respondent is the daughter who was born to them on 29.11.2015. Thereafter there was misunderstanding between them and as such they got separated. While being so, the petitioner filed the divorce petition in HMOP.No.89 of 2016 and wife has not filed any maintenance case under Section 125 of Cr.P.C. She would have filed maintenance case in the divorce petition itself and as such the entire proceedings filed in M.C.No.38 of 2016 is not maintainable. He further submitted that the wife is having B.Sc., B.Ed., educational qualification and even if she works as a teacher in a private school she would earn more than Rs.10,000/-. Both the Courts failed to consider this point and ordered maintenance as against the petitioner.

3. It is seen that the petitioner is the husband of the first respondent herein and they got married on 10.12.2014. They gave birth to a female child/second respondent herein on 29.11.2015. Thereafter there was a misunderstanding between them, therefore the first respondent came out from the matrimonial home and living separately. Though the learned counsel for the petitioner raised a specific ground that when the divorce petition is pending in HMOP No.89 of 2016, on the file of Sub Court, Kallakurichi the maintenance petition filed by the first respondent under Section 125 of Cr.P.C. is not maintainable. When the divorce case is pending filed by the husband, the wife cannot file maintenance case.

4. Heard both sides and perused the materials available on record.

5. The divorce petition was filed by the petitioner/husband on 29.07.2016, only after the receipt of the divorce summons, the first respondent/wife filed maintenance case under Section 125 of Cr.P.C. on 17.11.2016. Absolutely there is no provision and the wife can very well file maintenance case under Section 125 of Cr.P.C. even when the divorce petition filed by the husband is pending. Therefore, this Court is of the considered opinion that the Courts below have rightly ordered maintenance as against the petitioner and this Court finds no illegality or irregularity in the orders passed by the Courts below. Further, mere educational qualification of the first respondent/wife would not mean that she would have earned more than Rs.10,000/-, therefore the present petition is nothing but amounts to second revision as this Court is not inclined to entertain this petition. Accordingly the criminal original petition stands dismissed. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The III Additional Sessions Judge,
Villupuram @ Kallakurichi
2. The Judicial Magistrate No.1,
Kallakurichi.

Ajs(co)

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