

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.09.2020

PRONOUNCED ON : 15.09.2020

CORAM

THE HON'BLE Mr. JUSTICE P.N. PRAKASH

Cr1.R.C.No.755 of 2020
and
Cr1.M.P.No.5358 of 2020

Dinesh Kumar

... Petitioner

 $V_S.$

1.Priyanka

2.Minor Rithvik

... Respondents

Criminal Revision filed under Section 397 r/w 401 Cr.P.C. seeking to set aside the fair and decreetal order dated 15.06.2020 passed in M.C.No.37 of 2018 on the file of the Family Court, Namakkal.

For Petitioner : Mr.S.Muthukrishnan

O R D E R

This case was taken up through video conferencing.

2. This criminal revision has been filed seeking to set aside the order dated 15.06.2020 passed in M.C.No.37 of 2018 on the file of the Family Court, Namakkal.

3. For the sake of convenience, the parties will be referred to by their names.

4. Priyanka got married to Dinesh Kumar on 08.09.2014 and through the wedlock, they were blessed with a male child Rithvik on 20.08.2015. Priyanka went to her natal home for delivery and after delivery, Dinesh Kumar did not take her and the child back. When Priyanka went to her matrimonial home asking for her educational certificates, her mother-in-law refused to give them. While so, Dinesh Kumar filed H.M.O.P.No.55 of 2017 before the Subordinate Court, Rasipuram, for divorce and Priyanka filed

H.M.O.P.No.167 of 2017 before the Subordinate Court, Namakkal, for restitution of conjugal rights. Since Priyanka and her child were left high and dry, Priyanka filed M.C.No.56 of 2017 before the Judicial Magistrate Court, Namakkal, under Section 125 Cr.P.C., claiming maintenance for herself and her child. On constitution of the Family Court in Namakkal District, M.C.No.56 of 2017 was transferred there and renumbered as M.C.No.37 of 2018.

5. Before the Family Court, Namakkal, Priyanka examined herself as PW1 and her aunt Dhanabakiyam as PW2 and marked two exhibits. Dinesh Kumar examined himself as RW1, however, he did not mark any exhibit.

6. After considering the evidence on record and hearing either side, the Family Court, Namakkal, by order dated 15.06.2020, has awarded maintenance of Rs.4,000/- per month to Priyanka and Rs.3,000/- per month to Rithvik, (totally Rs.7,000/-) payable from 31.08.2017.

7. Aggrieved by the same, Dinesh Kumar has preferred the present criminal revision petition.

8. Heard Mr.S.Muthukrishnan, learned counsel for Dinesh Kumar.

9. The learned counsel for Dinesh Kumar submitted that Priyanka was not cross-examined by Dinesh Kumar at all and therefore, undue prejudice was caused to him. He further submitted that the trial Court had failed to note that Priyanka and her child were not neglected by Dinesh Kumar.

10. This Court carefully perused the records. Information received from the trial Court shows that Priyanka was examined-in-chief on 03.10.2018 and on that date, the learned counsel for Dinesh Kumar sought adjournment for cross-examining her. Therefore, the case was adjourned to 09.10.2018. On 09.10.2018, when Priyanka came to the Court, the learned counsel for Dinesh Kumar did not cross-examine her and therefore, the case was further adjourned. Thus, in this case, sufficient opportunities were given to Dinesh Kumar for cross-examining Priyanka, but, he did not choose to cross-examine her for the reasons best known to him. In fact, Priyanka's aunt Dhanabakiyam was examined as PW2 and she was cross-examined by the learned counsel for Dinesh Kumar. Dinesh Kumar did not even file an application under Section 311 Cr.P.C. for recalling Priyanka.

11. From the evidence adduced by Priyanka, it is clear that, after delivery, Dinesh Kumar did not bother to take her

back and instead, he filed H.M.O.P.No.55 of 2017 before the Subordinate Court, Rasipuram, for divorce. Dinesh Kumar has not denied the matrimonial relationship nor the paternity of Rithvik.

12. The evidence on record shows that Dinesh Kumar had completed B.E., and is employed in a private engineering college. Under such circumstances, the quantum of maintenance awarded by the trial Court cannot be said to be excessive.

In the result, this criminal revision petition is dismissed as being of merits. Connected CrI.M.P. is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

nsd

To

1.The Family Judge,
Namakkal.

2.The Subordinate Judge,
Rasipuram.

3.The Subordinate Judge,
Namakkal.

CrI.R.C.No.755 of 2020

AJS (CO)

GN (07/10/2020)