

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl RC.No.432 of 2014
and
M.P.No.1 of 2014

V. Saravanan

..Petitioner/Respondents/
Respondent

Vs.

1. Thenmozhi
2. Minor Nirmayi
reptd by Guardian mother
Mrs.Thenmozhi

..Respondents/Petitioner/
Petitioner

Prayer:

Criminal Revision filed under Section 397 read with Section 401 of the Criminal Procedure Code against the order made in CMP No.3/2010 in M.C.No.181/2008 on the file of the Family Court, Coimbatore District dated 10.01.2014 passed under Section 125 of Criminal Procedure Code, insofar as the first respondent herein is concerned and it is humbly prayed that this Hon'ble Court may be pleased to set aside the same insofar as the first respondent herein is concerned.

For Petitioner : Mr.R. Saseetharan
For Respondents : Mr. R.Subramanian

ORDER

This Criminal Revision is directed against the order dated 10.01.2014 passed in CMP No.3/2010 in M.C.No.181/2008 on the file of the Family Court, Coimbatore.

2. M.C.No.181 of 2008 has been laid by the respondents against the Revision Petitioner for maintenance. Pending main case, it is found that the respondents had preferred CMP No.3 of 2010 claiming interim maintenance from the revision petitioner as well as for the payment of legal expenses.

3. Briefly stated, according to the respondents, the revision petitioner is working as Design and Quality Control Engineer with Hindustan Aeronautics Limited, Bangalore, and earning a monthly salary of Rs.45,000/- in addition to other perks and the first respondent has no independent income and not employed and the respondents are being taken care of by the parents of the first respondent and the respondents are unable to maintain themselves and accordingly, as the revision petitioner is bound by law to provide maintenance to them, accordingly, seeking a sum of Rs.20,000/- per month as interim maintenance and a sum of Rs.95,000/- towards legal expenses, they had preferred the abovesaid petition against the revision petitioner.

4. The Revision Petitioner resisted the abovesaid petition contending that the first respondent had left the matrimonial home on her own accord and she had always been rude and not shown respect to the revision petitioner and it is also put forth by him that the first respondent is highly educated and working in a reputed organisation earning thousands of rupees per month and she is financially sound and not in need of money towards maintenance from the revision petitioner and therefore, inasmuch as the first respondent had left the matrimonial home on her own accord, she is not entitled to claim any maintenance from the revision petitioner and the same had been concluded in the Domestic Violence proceedings between the parties and therefore, sought for the dismissal of the petition preferred by the respondents.

5. It is found that both the respondents as well as the revision petitioner has not chosen to adduce any evidence with reference to their respective claims. No documentary evidence had also been marked on the part of the respondents. On the side of the Revision Petitioner, Exs.R1 to R3 were marked. Considering the submissions put forth by the respective parties and the materials available on record, the trial court was pleased to direct the revision petitioner to pay a sum of Rs.4,000/- per month to the first respondent and Rs.3,000/- per month to the second respondent, in all, directed him to pay a sum of Rs.7,000/- towards interim maintenance from the date of interim petition. Impugning the same, the present Criminal Revision has been laid by the revision petitioner.

6. The relationship between the parties is not in dispute. Thus it is found that the first respondent, being the wife and the second respondent being the daughter of the revision petitioner, as per law, the revision petitioner is bound to provide maintenance commensurate to their status of living.

7. That the Revision petitioner had been working as an Engineer in Hindustan Aeronautics Limited, Bangalore, and earning a monthly salary of Rs.45,000/- is not in dispute.

8. Though it is claimed that the first respondent is a highly educated lady and the above fact having not been controverted by the first respondent, however, the case of the revision petitioner that the first respondent is employed in a concern and earning a considerable income is not borne out by any material. As at present, it is found that the first respondent is unemployed. Therefore, it is seen that the respondents are not having any independent income to maintain themselves.

9. In the light of the abovesaid factors, the revision petitioner being the husband and father of the respondents respectively is bound to provide maintenance. Though the revision petitioner would contend that the first respondent had left the matrimonial home on her own accord and not willing to live with the revision petitioner and had been always rude towards the revision petitioner and the same had also been determined in the domestic violence proceedings conducted between the parties, however, as rightly determined by the trial court, the conclusion arrived in Domestic Violence proceedings between the parties could not be straightaway taken for deciding the issues involved in this matter. Further as held by the trial court, with reference to the various contentions put forth by the revision petitioner challenging the entitlement of the first respondent in particular to claim maintenance from him, the abovesaid contention could only be adjudicated during the course of enquiry in the main petition and not in the interim petition for maintenance. As far as the petition for interim maintenance is concerned, the same had been sought for by the respondents till the conclusion of the main case. In such view of the matter, the trial court is justified in holding that the various contentions put forth by the revision petitioner could only be determined in the main petition and not in the present petition for interim maintenance.

10. In the light of the abovesaid factors, when the counsel for the revision petitioner has not disputed the liability of the revision petitioner to provide maintenance to his daughter, as determined by the trial court, however, when the factum that the first respondent being his wife is not in dispute, therefore, as at present, when the first respondent is found to be unemployed and not having any independent income and though the revision petitioner would put forth that the first respondent is owning considerable properties amounting to several lakhs of rupees, however, when pointing to the same, there is no reliable proof placed on the part of the revision

petitioner, in such view of the matter, considering the status of the parties and their mode of living and the minimum requirement that the respondents would be requiring for carrying on their life till the disposal of the main case and when the respondents are, as per law, entitled to claim interim maintenance till the disposal of the main petition, in such view of the matter, the trial court is found to be justified in fixing the interim maintenance payable to the first respondent at Rs.4,000/- per month and Rs.3,000/- per month to the second respondent and accordingly, the impugned order, in my considered opinion, do not warrant any interference.

11. During the course of arguments, the petitioner counsel would submit that the first respondent had chosen to withdraw the main petition with liberty to file fresh case on the same cause of action by filing a memo and the said memo having been taken on record by the trial court, according to him, the main petition had been dismissed as withdrawn by the trial court by order dated 30.10.2017 and he has also placed the abovesaid certified copy of the order passed by the trial court for consideration. The same has not been controverted by the respondents' counsel. Considering the abovesaid factors, it is found that the main case had been dismissed as withdrawn with a liberty to the first respondent to file a fresh case on the same cause of action by order dated 30.10.2017.

12. However, inasmuch as the trial court had also determined that the respondents are entitled to seek interim maintenance from the revision petitioner till the disposal of the main case, in such view of the matter, this Court having also held that the order of interim maintenance passed by the trial court in favour of the respondents do not warrant any interference, the withdrawal of the main case by the respondents would not, in any manner, affect the interim order passed by the trial court and the interim order passed by the trial court would be entitled to be enforced by the respondents as per law against the revision petitioner.

13. For the reasons aforesaid, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed.

bga

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

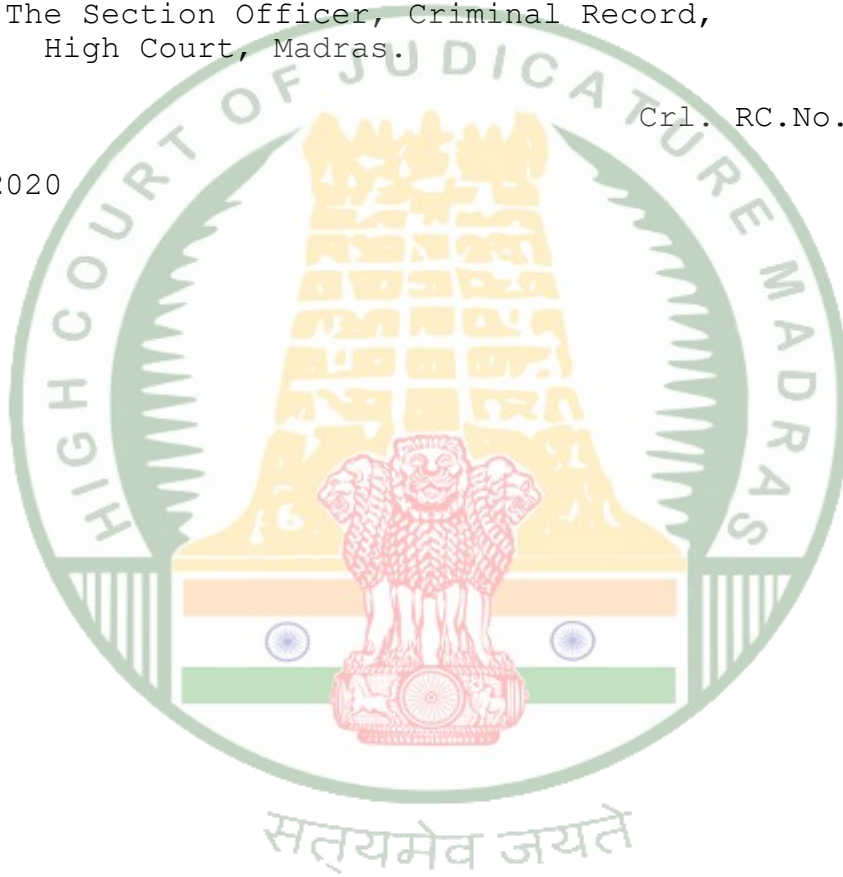
To

- 1.The Judge, Family Court, Coimbatore District.
2. The Judicial Magistrate No.II, Coimbatore.
3. The Chief Judicial Magistrate, Coimbatore (for information)
4. The Additional District Judge, Fast Track Court No.II, Coimbatore.

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

Cr1. RC.No.432 of 2014

NR(CO)
EU 16.07.2020



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