



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1.R.C. (MD)No.47 of 2016

and

Cr1.M.P. (MD)No.993 of 2016

WEB COPY

Kalyanasundaram

... Petitioner/Respondent

versus

1. Muthanandam @ Premalatha

2. Minor K.Muthu Priyadharshan

(Minor is represented by his mother

& guardian 1st respondent)

... Respondents / Petitioners

Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C. against the order dated 24.11.2015 passed by the Family Court, Madurai, in M.C.No.6 of 2012.

For Petitioner

: Mr.D.Rameshkumar

For Respondents

: Mr.K.K.Senthil

ORDER

This Criminal Revision Case has been filed by the husband of the respondent as against the order dated 24.11.2015, passed by the Family Court, Madurai in M.C.No.6 of 2012.

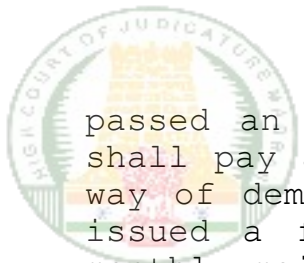
2. The trial Court, by order dated 24.11.2015, which is impugned in this petition, allowed the petition filed by the respondents and directed the petitioner to pay a sum of Rs.3,000/- p.m. to the first respondent and Rs.2,000/- p.m. to the second respondent towards monthly maintenance from January 2014 onwards. Aggrieved over the same, the petitioner has preferred this Criminal Revision Case on the following grounds

(i) When the petitioner is ready to take back the child, the trial Court has not considered the same and passed the order of maintenance to the second respondent also. Therefore, the order of maintenance is highly excessive and the petitioner can afford an opportunity to provide a good education and shelter to the second respondent/child.

(ii) Though the petitioner is inclined to maintain the child, the first petitioner/wife has forcibly taken away the child from his custody and filed the maintenance case in order to harass the petitioner.

3. This Court, on 03.02.2016, while taking up this Criminal Revision Case for hearing, ordered notice to the respondents and

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passed an order of interim stay on condition that the petitioner shall pay a sum of Rs.60,000/- directly to the first respondent by way of demand draft or pay order on or before 22.02.2016 and also issued a further direction to the petitioner to pay 50% of the monthly maintenance as ordered by the trial Court to the respondents on or before the 7th day of every succeeding English Calender month without fail. This Court has also directed the petitioner to file an affidavit regarding the compliance of the said condition before the Registry after serving advance copy to the respondents.

4. Today, when the matter is taken up for hearing, the learned counsel for the petitioner submits that the maintenance petition has been filed without filing any supporting documents for the proof of employment of the petitioner and the Court below, without ascertaining the sources of income for the petitioner, has mechanically passed the order of maintenance, directing him to pay a sum of Rs.5,000/- towards maintenance (Rs.3,000/- to the first respondent and Rs.2,000/- to the second respondent). He further submits that the petitioner is also taking care of his aged parents. But, the trial Court has not taken into consideration of his liabilities towards his parents and unilaterally passed the order in favour of the respondents without considering the sources of income of this petitioner. It is the further contention of the learned counsel for the petitioner that even according to the respondents, the petitioner was working in a private Banian Company at Tirupur and in view of Covid-19 pandemic situation, he is not having any job to take care of himself. While so, the order of the trial Court, directing the petitioner to pay the monthly maintenance of Rs.5,000/- is excessive.

5. Per contra, the learned counsel for the respondents submits that this Court, by order dated 03.02.2016, passed an order directing the petitioner to deposit a sum of Rs.60,000/- (i.e. half of the arrears of maintenance amount) directly to the first respondent by way of demand draft or pay order and also directed to pay 50% of the monthly maintenance amount as directed by the trial Court to the respondents on or before 7th day of every succeeding English Calender month. But, the petitioner has not complied with the order of this Court. According to him, the petitioner has paid only up to December 2018 and thereafter, he did not pay any amount from January 2019. The petitioner is working in a dying factory at Tirupur and capable of earning upto Rs.30,000/- p.m. In order to evade the payment of maintenance amount, the petitioner has filed the present petition.

6. Heard the rival submissions of Mr.D.Rameshkumar, learned counsel appearing for the petitioner and Mr.K.K.Senthil, learned counsel appearing for the respondents and perused the available records.



7. This petition is filed as against the order of maintenance awarded by the trial Court in favour of the respondents. Admittedly, the first respondent is the wife of the petitioner and the second respondent is the son of the petitioner. The only ground raised by the petitioner in respect of this petition is that without even verifying the source of income, the trial Court has erroneously passed an order of maintenance directing him to pay a sum of Rs.5,000/- towards monthly maintenance to the respondents and the same is in excess. The petitioner simultaneously has also taken a ground that he is having sufficient means to take care of his child/second respondent and the child was forcibly taken away from his custody by the first respondent. When the petitioner has admitted in this petition that he is having sufficient means to maintain his child/second respondent, he is equally responsible to maintain his wife/first respondent also. Therefore, there is no merit in this petition.

8. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

9. It is always open to the respondents to file necessary application for enhancement of maintenance before the trial Court, if they are so advised.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TM/OGY

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Judge, Family Court, Madurai.

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SMA/17/07/2020/3P/2C