

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.03.2021

Coram :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.15 of 2021 and

Crl.M.P.No.129 of 2021

M.Udayarajulu

... Petitioner

Versus

1. P.Priya

2. U.P.Hemachander

(Minor aged 14 years)

represented by his mother and natural
guardian P.Priya)

... Respondents

Criminal revision Petition is filed under Sections 397 r/w 401 of the Cr.P.C., to call for records of the Judgment passed in M.C.No.55 of 2019 dated 24.11.2020 on the file of V Additional Principal Judge, Family Court, Chennai and set aside the same and modify the maintenance order.

For Petitioner : Mr.V.M.Venkatramana

O R D E R

This Criminal Revision case has been filed against the Judgment passed in M.C.No.55 of 2019 dated 24.11.2020 on the file of V Additional Family Court, Chennai and set aside the same and also modify the maintenance order.

2.The petitioner is the respondent on the file of V Additional Family Court, Chennai in M.C.No.55 of 2019 and the respondents herein are the petitioners. The respondents filed the maintenance case for maintenance in M.C.No.55 of 2019 before the V Additional Family Court, Chennai against the petitioner for maintenance. The learned Judge, after enquiry passed an order by ordering a sum of Rs.20,000/- per month to the first respondent/wife and a sum of Rs.10,000/- to the second respondent/minor son as maintenance. Challenging the said order passed by the Family Court, the respondent therein has filed the present petition before this Court.

3. The case of the respondents before the Family Court in M.C.No.55 of 2019 is that the first respondent herein married the petitioner on 02.02.2006 and out of their wedlock she gave birth to a male child, the second respondent herein on 01.02.2007. The Second respondent is under the care and custody of the first respondent/mother. When she was pregnant, the petitioner, his parents and other family members abused the first respondent in filthy language and tortured her by demanding gold and two wheeler as dowry, due to which on 03.07.2006, the parents of the first respondent went to the petitioner's house and took her to their house. Thereafter, the petitioner filed a petition for divorce in O.P.No.3739 of

2014 against the first respondent on the ground of cruelty and desertion and the first respondent also filed the petition in O.P.No.4286 of 2014 against the petitioner for restitution of conjugal rights. Both the cases were tried together before the Principal Judge, Principal Family Court, Chennai and the petition filed by the petitioner was allowed and the petition filed by the first respondent herein was dismissed vide common order dated 13.11.2018. Aggrieved by the said common order, the first respondent has preferred a Civil Miscellaneous Appeal before this Court and the same is pending. It is further stated that the first respondent is not working anywhere and she is fully depending upon the income of her parents and taking care of the second respondent, who is studying in sixth standard in C.S.I. Bain Matriculation Higher Secondary School, Chennai and further she has to look after the educational expenses of her son also. The petitioner is electrician and doing electrician work and he is also having ancestral property and having source of income for a sum of Rs.5,00,000/- per year and he is also getting rental income of Rs.30,000/- per month. Therefore he is having sufficient means to maintain the respondents, who do not have means to maintain themselves. Hence, the petitioner is liable to maintain the respondents.

4. The stand taken by the petitioner herein in the counter statement filed before the Family Court is that on 03.07.2006, after the third month of marriage, the parents of the first respondent came to the house of the petitioner took the first respondent to their house for Aadi month and thereafter she has not returned. It is further stated that the petitioner completed the I.T.I. Mechanic course and completed his apprenticeship at Metropolitan Corporation, Chennai and after completion he registered before employment office and there is no dowry demand as alleged by the first respondent. Neither the petitioner nor his parents or his relatives have scolded the first respondent as alleged by her and they only wanted the petitioner and the respondent to live together. It is further stated that the first respondent and her parents never informed about the birth of the second respondent to him. It is further stated that from the date of marriage, the first respondent was not interested to live in joint family. Therefore, he filed a petition for divorce in O.P.No.3739 of 2014 and during pendency of the same, even though the first respondent not willing to join with the petitioner and only as a counter blast she filed petition for restitution of conjugal rights in O.P.No.4286 of 2014 and the Family Court allowed the petition filed by him and dismissed the petition filed by the first respondent. It is further stated that once the divorce was granted on the ground of cruelty and desertion the first respondent is not entitled to get any maintenance. It is further stated that the second respondent was not shown to the petitioner even a single day and the first respondent has got ancestral properties and also receiving rental income of Rs.30,000/- per month and the petitioner is unemployed and has no means and since he is only doing electrician work, he would not get the work every day and he does not know when he will

get work and he is not a Government employee or he is not having any permanent income.

5. The learned counsel for the petitioner would further submit that the first respondent left the matrimonial home voluntarily on her own. The parents of the first respondent have not informed about the birth of the second respondent and he got divorce on the ground of cruelty and desertion and therefore the respondents are not entitled to get maintenance. He would further submit that she has got ancestral property and getting rental income of Rs.50,000/- per month and she is having sufficient means to maintain herself and her son and therefore he is not liable to pay maintenance. The learned Judge failed to consider the pleadings and evidence and erroneously ordered a sum of Rs.20,000/- and the same is liable to be set aside.

6. Heard the learned counsel for the petitioner. There is no representation for the respondents.

7. The jural relationship of the parties are not disputed. The petitioner and the respondents are residing separately also not in dispute and the second respondent/minor son is under the care and custody of the first respondent/ wife also not disputed. The main contention raised by the learned counsel for the petitioner is that he got divorce on the ground of cruelty and desertion and further the first respondent has got sufficient means to maintain herself and as far as the divorce is concerned, the first respondent has stated that she filed Civil Miscellaneous Appeal before this Court and the same is pending and further the petitioner has not denied the same. Though the divorce was granted on the ground of desertion and cruelty by the Family Court, the first respondent filed an Appeal before this Court and the Appeal is the continuation of proceeding. Therefore, since it had not attained finality, respondents are entitled to get maintenance till the disposal of the Appeal and after the disposal of the Appeal, certainly the petitioner can approach the family Court for modification. As far as income of the first respondent is concerned, though the petitioner has stated that the first respondent has got ancestral property and receiving rental income of Rs.50,000/- per month, he has not produced any document to show that the property stands in the name of the first respondent, she is also receiving rental income. As far as income of the petitioner is concerned, as per the decisions of the Hon'ble Supreme Court when the case filed by the wife for maintenance and the petitioner say that he has no income, he should file an affidavit to that effect, but he has not filed such an affidavit before the Family Court. Since, it is not proved that the first respondent has independent income to maintain herself and the petitioner has not proved her income by way of producing any documentary evidence, as the petitioner admitted that he is doing electrician work, he would definitely get considerable income. Considering the costs of living prevailing as on date, this Court feels that petitioner is liable to pay a sum of Rs.10,000/- to the first respondent and

Rs.10,000/- to the second respondent as maintenance.

8. Accordingly, the order passed by the V Additional Family Court, Chennai in M.C.No.55 of 2019 is modified as far as first respondent is concerned from Rs.20,000/- to Rs.10,000/- and the maintenance ordered to the second respondent remains unaltered.

With the above modification, this Criminal Revision Case is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

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To

The V Additional Principal Judge,
Family Court, Chennai

+1cc to Mr.V.M.Venkatramana ,Advocate, SR.NO.14650

Crl.R.C.No.15 of 2021

PMK (CO)
KKN 26.04.2021

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