

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.32 of 2021

and

Crl.Mp.No.381 of 2021

Senthil @ Senthil Kumar ..Petitioner/Respondent

Versus

1.Kutty Kumar @ Kutty

2.Minor Nishikanth ..Respondents/Petitioner

Criminal Revision Case filed under Section 397 read with 401 Criminal Procedure Code, to set aside the order dated 25.02.2020 made in M.C.No.57 of 2019 on the file of the Chief Judicial Magistrate Court, Tiruppur.

For Petitioner : Mr. Vinoth Kumar

For Respondents : No Appearance

O R D E R

This Criminal Revision Case has been filed to set aside the order dated 25.02.2020 made in M.C.No.57 of 2019 on the file of the Chief Judicial Magistrate Court, Tiruppur.

2.The petitioner is the husband and the first respondent is the wife and the second respondent is the minor son. The respondents filed a petition in M.C.No.57 of 2019 under Section 125 of Criminal Procedure Code before the Chief Judicial Magistrate Court, Tiruppur seeking for monthly maintenance from her husband/petitioner herein. After enquiring, the learned Magistrate ordered a sum of Rs.3,000/- to each of the respondents as monthly maintenance. ~~Challenging~~ the said order directing payment of maintenance, the husband/petitioner filed the present revision before this Court.

3.Though notice was ordered, paper publication was effected and the names of the respondents are also printed in the cause list, none appeared on behalf of the respondents either in person or through counsel.

4.Heard the learned counsel for the petitioner and perused the materials available on record.

5.The learned counsel for the petitioner would submit that the first respondent/wife left the petitioner/husband without any valid reasons and therefore, he has also filed a petition for restitution of conjugal rights, but despite the same, she refused to come and live with him.

6.Further, the learned counsel submitted that the first respondent/wife is also working in a Petrol Bunk as Accountant and earning a sum of Rs.6,000/- per month and therefore, despite having sufficient means, she filed a petition for monthly maintenance. In support of the above submissions, he points out, as per the dictum laid down by the Hon'ble Supreme Court of India, if the wife is able to maintain herself, and the husband, who is working as a coolie and earning only a meager salary, then the wife is not entitled to get monthly maintenance from the husband. In this case, it is submitted that the first respondent/wife is an earning member and therefore, she is not entitled to any maintenance, however, being father of the minor child, the petitioner has no objection to pay maintenance to the minor child.

7.The relationship of the parties is not in dispute and the fact that the parties are living separately is also not in dispute. The only dispute is with respect to the award of maintenance ordered by the learned trial Judge.

8.A perusal of the entire material available on record would show that despite having sufficient means, the first respondent filed a petition for monthly maintenance. The said fact was also admitted by her during cross-examination, where she deposed that she was temporarily working in a petrol bunk, though not as an Accountant. The fact that the petitioner was working as a Coolie is also evident from the documents.

9.Considering the facts and circumstances of the case, this Court sets aside the monthly maintenance ordered to be paid to the first respondent/wife, since she is also an earning member, who is capable to maintain herself. At the same time, the monthly maintenance of Rs.3,000/- ordered to be paid to the minor son is hereby enhanced to Rs.5,000/-.

10.The petitioner is directed to pay a sum of Rs.5,000/- to the second respondent/minor son towards monthly maintenance, from the date of filing of M.C.No.57 of 2019. Further, this Court directs the petitioner to pay the arrears of the said amount of Rs.5,000/- per month from the date of the petition on or before 16.04.2021 and also directs him to pay the regular monthly payment of maintenance to the second respondent/minor son on 5th day of every English Calender month.

11.It is made clear that if the petitioner/husband fails to deposit the arrears amount on or before 16.04.2021, the order of this Court shall stand cancelled and the order passed by the trial Court shall stand automatically confirmed.

12.With the above directions, the Criminal Revision Case is disposed of. Consequently, the connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

The Chief Judicial Magistrate Court, Tiruppur.

+ 1 cc to Mr.S.Vinothkumar, Advocate SR.21625

Cr1.R.C.No.32 of 2021

and

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