

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.284 of 2020
and Crl.M.P.No.5200 of 2021

M.Iyyamperumal

... Petitioner

Vs.

1.M.Muthulakshmi

2.I.Nithish Raj (Minor)

... Respondents

(2nd respondent is minor Rep. by his Mother
and Natural Guardian M.Muthulakshmi)

PRAYER : Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., to set aside the order passed in M.P.No.508 of 2019 in M.C.No.476 of 2018 dated 19.12.2019 pending on the file of V Additional Family Court at Chennai.

For Petitioner : Mr.S.Varanesh

For Respondents: Mrs.M.Saral
for Mr.J.Saravanavel

O R D E R

This Criminal Revision Case has been filed to set aside the order passed in M.P.No.508 of 2019 in M.C.No.476 of 2018 dated 19.12.2019 pending on the file of V Additional Family Court at Chennai.

2. The petitioner is the husband, the first respondent is the wife and the second respondent is the minor son. The respondents filed a petition under Section 125 of the Criminal Procedure Code before the V Additional Family Court at Chennai, for maintenance. The case was taken on file in M.C.No.476 of 2018 and the same is pending. During the pendency of the maintenance case in M.C.No.476 of 2018, in the year 2019, the respondents filed a petition under Section 24 of the Hindu Marriage Act, 1955, for interim maintenance. The said petition was taken on file in M.P.No.508 of 2019. After enquiry, the Family Court ordered a sum of Rs.10,000/- to the first

respondent and Rs.5,000/- to the second respondent, as monthly interim maintenance, during the pendency of the maintenance case. Challenging the said order passed by the learned V Additional Family Court, Chennai, the petitioner/husband filed the present revision petition.

3. Learned counsel for the petitioner would submit that during the pendency of the maintenance case, the respondents invoked the wrong provision instead invoking provision under Section 125 of the Cr.P.C., and that they invoked provision under Section 24 of the Hindu Marriage Act, 1955 which is not maintainable and further the petitioner is ready to live with the respondents. The first respondent filed a petition in O.P.No.3090 of 2018 under Section 9 of the Hindu Marriage Act, 1955 for restitution of the conjugal rights. However, for the reasons best known to her, she withdrew the said petition and she filed a petition for maintenance before the V Additional Family Court, Chennai. Now, the petitioner is ready to live with her and therefore, the order passed by the learned Judge is liable to be set aside.

4. Learned counsel for the respondents would submit that though at the time of filing the revision, in order to get the stay of the order of the V Additional Family Court, Chennai, the petitioner submitted before this Court that he is ready to live with her. Therefore, this Court also directed both the petitioner and the respondents to live together. However, thereafter within a short period the petitioner shown his original color and started harassing the respondents. Even, the petitioner has not paid maintenance amount except Rs.37,000/-. There is no merit in the revision petition and the same is liable to be dismissed.

5. Heard both sides and perused the materials available on record.

6. The relationship of the parties are not in dispute. Both the petitioner and respondents are living separately are not in dispute and the respondents filed maintenance case before the V Additional Family Court, Chennai, is also not in dispute. During the pendency of the maintenance case, the respondents filed a petition in M.P.No.508 of 2019 for interim maintenance till the disposal of the maintenance case and learned Judge considered the entire facts and ordered Rs.10,000/- and Rs.5,000/- to the first and second respondents respectively. Since the relationship of the parties are admitted and they are living separately and whatever the defence taken by the petitioner, it can be decided only in the maintenance case pending before the V Additional Family Court, Chennai and therefore, under these

circumstances, against the order in interlocutory application, no revision is maintainable.

7. In such circumstances, the criminal revision case is dismissed and the learned V Additional Family Court, Chennai, is directed to execute the order dated 19.12.2019 and also directed to proceed maintenance case in M.C.No.476 of 2018 in accordance with law and decide the maintenance case within a period of three months from the date of receipt of a copy of this order. In view of the final order passed in this criminal revision case, the interim order already granted by this Court on 11.12.2020, stands vacated.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dm

To

The Judge,
The V Additional Family Court,
Chennai.

+2ccs to Mr.S.Sathis Kumar, Advocate, Sr.No. 25466

Crl.R.C.No.284 of 2020

SSI(CO)
RMP(29/04/2021)

सत्यमेव जयते

WEB COPY