

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.137 of 2021
and CrI.M.P.No.2734 of 2021

B.Ramesh

... Petitioner

...vs...

1.S.Deepa

2.Minor R.Prathisha

2nd petitioner represented by her mother
and natural guardian and next friend

1st respondent.

... Respondents

Criminal Revision Case filed under Section 397 read with 401 Cr.P.C, to call for the records and set aside the order dated 16.03.20201 made in M.C.No.30 of 2018 by the Judicial Magistrate, Arakkonam.

For Petitioner : Mr.B.Jawahar

ORDER

By consent, the matter is taken up for final disposal at the admission stage itself, without issuing notice to the respondents.

2.This Criminal Revision Case has been filed against order dated 16.03.20201 made in M.C.No.30 of 2018 by the Judicial Magistrate, Arakkonam.

3.According to the petitioner, the marriage between the petitioner and the first respondent was solemnized on 09.09.2015 and out of their wedlock, a female child/second respondent herein was born. Due to matrimonial dispute, the petitioner and the respondents were living separately and the minor child is under the care and custody of the mother/the first respondent herein. Subsequently, the respondents 1 and 2 filed a petition in M.C.No.30 of 2018 under Section 125 Cr.P.C seeking maintenance from the petitioner. Thereafter, the petitioner entered appearance through his counsel and also filed counter, however, he has not participated in the enquiry. After giving

sufficient opportunity and also considering the averments made in the affidavit and counter, the learned Magistrate awarded a sum of Rs.7,500/-, each per month as maintenance to the respondents, apart from Rs.10,000/- for medical expenses. Challenging the same, the petitioner is before this Court by way of this revision.

4.The learned counsel for the petitioner would submit that without providing sufficient opportunity to the petitioner, the learned Magistrate has passed the order.

5.The maintenance case was filed in the year 2018 and private notice sent to the petitioner/husband was returned as unclaimed. Hence, an exparte order was passed on 05.04.2019. Subsequently, the petitioner/husband filed C.M.P.No.862 of 2019 to set aside the exparte order. The learned Judicial Magistrate, Arakkonam, on 29.09.2018 set aside the exparte order, on payment of cost of Rs.1000/- to be paid to the 1st respondent/wife and also ordered interim maintenance of Rs.7,000/-. The petitioner/husband paid the cost of Rs.1000/- and the exparte order was set aside. Thereafter, the petitioner/husband filed counter affidavit on 01.11.2019, stating that the interim maintenance arrears will be paid in the month of February 2020. Therefore, the learned Magistrate adjourned the case from 14.11.2019 to 02.01.2020. Subsequently, since the petitioner/husband was called absent and also not complied with the conditional order, the learned Magistrate was inclined to pass such order. Therefore, the contention of the learned counsel for the petitioner that no opportunity was provided to the petitioner is unsustainable and it is highly perverse.

6.The scope of Section 125 Cr.P.C is a summary procedure and for speedy relief because the wife and children have to survive and if they have no means, they would struggle endlessly.

7.On a careful perusal of the entire records, it would reveal that the maintenance case was filed in the year 2018 and exparte order was passed on 05.04.2019. Subsequently, the learned Magistrate set aside the exparte order and also ordered interim maintenance of Rs.7,000/- to the respondents herein, but, the same was not complied with by the petitioner. It is seen that after filing of the counter, the petitioner/husband was not cooperated for disposal of the case and also not complied with the conditional order. Therefore, the purpose and scope of Section 125 Cr.P.C was defeated. These type of revision cases have not been entertained by this Court.

8. In the light of the above facts, this Court, going to the merits of the case that the petitioner is earning Rs.60,000/- per month, however, he denied the same in his counter as he himself admitted in his counter that he is paying Rs.13,000/- for E.M.I, spending Rs.13,000/- for maintaining their parents and also paying Rs.12,000/- interest for private loan, which clearly shows the earning capacity of the petitioner/husband, is of the view that the learned Magistrate has rightly ordered a sum of Rs.7,500/- each per month as maintenance to the 1st respondent/wife and 2nd respondent/minor daughter, apart from Rs.10,000/- for medical expenses.

9. This Court and the Hon'ble Supreme Court time and again reiterated that the wife is entitled to par with the status of the husband and family of the husband. Further, the petitioner/husband has not produced any document to substantiate his income capacity.

10. In the light of the above facts and circumstances, this Court does not find any perversity or illegality in the order passed by the learned Magistrate and therefore, the same is liable to be dismissed. Accordingly, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ms
To

The Judicial Magistrate,
Arakkonam.

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