



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Cr1.R.C.No.413 of 2021

and

Cr1.M.P.No.6677 of 2021

A.Ashok Kumar

... Petitioner

vs.

R.Punitha

... Respondent

Prayer: This Criminal Revision Case filed under Section 397 (1) and 401(1) of Criminal Procedure Code, to call for the records in M.C.No.45 of 2019 on the file of the Family Court, Salem, Salem District and set aside the maintenance order dated 08.04.2021 passed in M.C.No.45 of 2019 on the file of the Family Court, Salem.

For Petitioner : Mr. B.Vasudevan

For Respondent : Mr.K.Sathish Kumar

O R D E R

The present criminal revision has been filed to set aside the maintenance order dated 08.04.2021 passed in M.C.No.45 of 2019 on the file of the Family Court, Salem.

2. The petitioner is the husband and the respondent is the wife. The respondent/wife filed a petition in M.C.No.45 of 2019 under Section 125 of the Criminal Procedure Code (hereinafter referred to as 'Cr.P.C' for short) before the learned Family Court, Salem, for interim maintenance. The learned Judge, after hearing the parties, ordered a sum of Rs.3,000/- per month to the respondent/wife for maintenance. Challenging the said order, the petitioner/husband has filed the present revision before this Court.

3. The learned counsel for the petitioner would submit that already the petitioner/husband has filed the matrimonial original petition in F.C.O.P.No.176 of 2019 before the Family Court, Namakkal, for divorce. During the pendency of the divorce petition, the respondent/wife cannot invoke section 125 of Cr.P.C., and during the pendency of the maintenance case, the respondent/wife cannot seek a maintenance under Section 125 of Cr.P.C. In support of his contention, learned counsel placed reliance on a decision of this Court passed in Cr1.R.C.No.182 of 2019 dated 04.10.2019.



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

5. The marriage between the parties are not in dispute. Both are living separately is also not in dispute. The petitioner is earning a sum of Rs.7,000/- per month is also not in dispute. The learned Judge, Family Court, Salem, after considering the facts, on a finding that since the relationship of the parties are not in dispute and the respondent/wife has stated that she has no means to maintain herself, whereas, the husband has sufficient means to maintain his wife, ordered a sum of Rs.3,000/- per month to the respondent/wife for maintenance. In such circumstances, a decision of this Court passed in CrI.R.C.No.182 of 2019 dated 04.10.2019 referred to by the learned counsel for the petitioner is not applicable to the present case on hand. The facts, circumstances and stage of the case in the order referred to are entirely different from the case on hand.

6. In view of the fact that both the maintenance case and HMOP case are pending before the very same learned Judge, Family Court, Salem, the interim maintenance awarded in the petition in M.C.No.45 of 2019 filed by the respondent herein will be taken into consideration at the time of disposal of the Matrimonial Original Petition and at the time of awarding permanent alimony and the award of interim maintenance can be adjusted. Therefore, considering the facts and circumstances of the case, relationship and status of the parties and since the respondent/wife proved that she is unable to maintain herself, whereas, the husband has got sufficient means to maintain his wife, the learned Judge awarded interim maintenance. Therefore, there is no perversity in the order passed by the learned Judge, Family Court and the revision is liable to be dismissed.

7. Accordingly, the criminal revision is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar

dm
To
The Judge, Family Court, Salem.

CrI.R.C.No.413 of 2021
and CrI.M.P.No.6677 of 2021

PPA(CO)
B.VC (28/09/2021)