

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.492 of 2019 &
CrI.M.P.No.6864 of 2019

K.S.Senthil Kumar ... Petitioner/Respondent

Vs.

1.Suba Sakthi

2.Master Santhosh Kumar ... Respondents/petitioner

PRAYER: Criminal Revision Petition filed under 397 r/w 401 of Cr.P.C. to set aside the order dated 25.01.2019 made in M.C.No.465 of 2014, on the file of V Additional Family Court, Chennai.

For Petitioner : Ms.R.Sakunthala

For Respondents: No appearance

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O R D E R

This Criminal Revision Petition has been filed by the petitioner/husband, challenging the order dated 25.01.2019 made in M.C.No.465 of 2014, on the file of learned V Additional Judge, Family Court, Chennai, granting maintenance to the respondents, who are the wife and son of the petitioner.

2. The brief facts of the case are as follows:-

Admittedly, the petitioner and the respondent are the husband and wife. Out of their wedlock, a male child was born to them. Due to some misunderstanding between them, the respondent/wife left matrimonial home, and filed a case in M.C.No.465 of 2014, on the file of learned Additional Judge, Family Court, Chennai, seeking maintenance to herself and her son. The learned Judge, after considering the submission on both sides, directed the petitioner herein to pay a sum of Rs.6,000/- to the first respondent-wife and Rs.4,000/- to the second

respondent-son. Aggrieved by the said order, petitioner/husband is before this Court.

3. The learned counsel for the petitioner would submit that the petitioner has no objection regarding payment of maintenance for the second respondent-son is concerned and however, objected maintenance awarded to the first respondent-wife alone on the ground that the wife had left the matrimonial home on her own volition. It is also submitted that the petitioner-husband obtained an order of exparte divorce, therefore, first respondent-wife is not entitled to receive any maintenance. The learned counsel, by referring Section 125 (4) of Cr.P.C., would contend that if the wife has deserted, she is not entitled to claim maintenance from her husband and therefore, prays for setting aside the order of the Family Court.

4. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice has been served as early as on 06.06.2019, and their names have printed in the cause list, there was no representation on behalf of the respondents.

5. Admittedly, the marriage between the petitioner and the first respondent was solemnized on 08.02.2009 and out of the wedlock, the second respondent was born. Subsequently, the first respondent/wife left matrimonial home along with the second respondent-son. Thereafter, the petitioner-husband filed a petition for divorce before the learned III Additional Principal Judge, Family Court, Chennai, in H.M.O.P.No.4552 of 2016, and obtained an order of ex-parte divorce. According to the learned counsel, since the petitioner-husband got divorce from her wife on the ground of cruelty, the respondent-wife is not entitled to get any maintenance.

6. No doubt, as per Section 125 (4) of Cr.P.C., if the wife is living in adultery, or if, without any sufficient reason, she refused to live with her husband, or if they are living separately by mutual consent, the wife is not entitled to receive maintenance. In the case on hand, though the petitioner/husband got an exparte order of divorce on the ground of cruelty, whereas, in the maintenance petition, it is clearly stated that because the petitioner had assaulted her and thereby several injuries have been caused, and therefore, she left from the matrimonial home. From the above, it could be seen that the first respondent-wife has not left the matrimonial home on her own volition and she refused to reunion with the husband, as the petitioner had assaulted her on several times, she left the matrimonial home. Though the petitioner got divorce, the first respondent-wife is entitled to get maintenance from her husband. In the case on hand, the petitioner/husband has not challenged

the capacity of the means to pay the maintenance and capacity to pay the income, however, the only ground is that he got divorce on the ground of cruelty, therefore, she is not entitled for maintenance.

7. Since the respondent-wife has clearly stated that her husband had assaulter her on several times, she is not interested or ready to live with her husband, therefore, under the circumstances, the ground of the petitioner that she left the matrimonial home on her own volition and as such, she is not entitled to get maintenance, is not legally sustainable. Therefore, under the circumstances, this Court does not find any perversity or illegality in the order passed by the Family Court, Chennai.

8. It is represented by the learned counsel for the petitioner that the petitioner had already deposited a sum of Rs.2,50,000/- and the first respondent-wife was permitted to withdraw the said amount on 04.07.2019. Therefore, the petitioner is directed to pay or deposit the balance arrears of maintenance in accordance with the order of the learned V Additional Judge, Family Court, Chennai in a lumpsum within a period of one month, less already deposited and thereafter, continue to pay the maintenance amount on or before 5th of every English Calendar month regularly, without fail.

9. In fine, the Criminal Revision Case fails and accordingly, it is dismissed. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
The Judge,
The V Additional Family Court,
Chennai

+1 cc to Mr.T.P.Prabakaran Advocate sr4178

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