

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.711 of 2019
and Crl.M.P.No.9950 of 2019

Suresh

... Appellant/Accused-1

Vs.

1.S.Archana

2.S.Bhawani

Minor rep. by mother and N.G.Tmt.S.Archana

... Respondents

PRAYER : Criminal Revision Case filed under Section 397 r/w.401 of Cr.P.C., to call for the records pertaining to the order passed by the learned IV Additional Family Court at Chennai in M.C.No.315 of 2014 dated 29.04.2019, set aside the same.

For Petitioner : M/s.Kesava Lakshmi for
Mr.R.Diwakaran.

For Respondents : Mr.S.Jayaseelan

O R D E R

The Petitioner is the husband. The first respondent is the wife, the 2nd respondent is the minor daughter. The marriage between the petitioner and the 1st respondent was solemnized on 14.09.2008. Out of their wed lock, they are blessed with 2nd respondent, the minor daughter, who born on 07.07.2009. Thereafter, due to misunderstanding between the parties, they are living separately. Therefore, the respondents filed M.C.No.315 of 2014 before the Family Court, Chennai. The learned Judge, after enquiry ordered Rs.3,000/- each to the respondents. Challenging the said order, the petitioner has filed this Revision Petition.

2. The learned counsel for the petitioner would submit that the 1st respondent wife is capable of doing work and there is no need for giving any maintenance amount. She voluntarily left matrimonial home without any valid reason. She is only insisting for maintenance. The petitioner/husband is not capable of maintaining himself as he is suffering from brain tumour and undergone surgery and now he also gone for second surgery. Now he is not capable of doing work as he was doing

earlier and unable to earn any income. He is not able to pay the maintenance amount. Learned Judge, Family Court, failed to appreciate the facts and the records produced by the petitioner, which requires interference of this court.

3. The learned counsel for the respondents would submit that since the petitioner had illegal intimacy with another lady, the 1st respondent left matrimonial home, now they are living separately. When the petitioner was in the hospital, he is not in a position to do any work. Further the petitioner is an auto driver and getting minimum Rs.500/- per day. No record is produced to show that he is not capable of doing work. The learned Judge, Family Court, elaborately discussed with entire records placed before it and rightly passed the order and there is no merit in the revision.

4. Heard and perused the records.

5. Admittedly, the petitioner is the husband. 1st respondent is the wife and 2nd respondent is the minor daughter. The marriage is not in dispute. Paternity of the 2nd respondent/minor child is not in dispute. Both are living separately and the same is not in dispute. According to the petitioner, 1st respondent left the matrimonial home voluntarily on her own volition with out any valid reason and she is having the capacity of maintaining herself and child. However, according to the 1st respondent, she is not capable of earning any income; due to illegal intimacy petitioner had with another lady, 1st respondent left the matrimonial home. She is not capable of maintaining herself. The petitioner is having own house and is also an auto driver owning Auto and earning minimum Rs.500/- per day. Therefore, the learned Judge, Family Court after considering all this, passed the order.

6. A perusal of the records would go to show that the petitioner has not established that the respondent/wife is capable of maintaining herself and though the petitioner has stated that due to his health conditions and post surgery complications, he could not ride auto, he has not produced any document to show that he is not capable of driving auto after operation. The medical records and certificates produced would go to show that the petitioner was having some ailment and he was taking treatment. Therefore, except that, no evidence is produced. But it is the contention of the petitioner that he is not capable of driving auto after operation and he could not earn money and pay maintenance as ordered by the Judge, Family Court. However, a reading of the order in M.C.No.315 of 2014 shows that the Judge, Family Court passed the order directing the petitioner to pay Rs.3,000/- each to the respondents, totally Rs.6,000/- per month from the date of petition. The order passed is very reasonable. There is no merit in the Criminal Revision to interfere with the order passed in M.C.No.315 of 2014. Accordingly, the Criminal

Revision case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The IV Additional Family Court at Chennai.

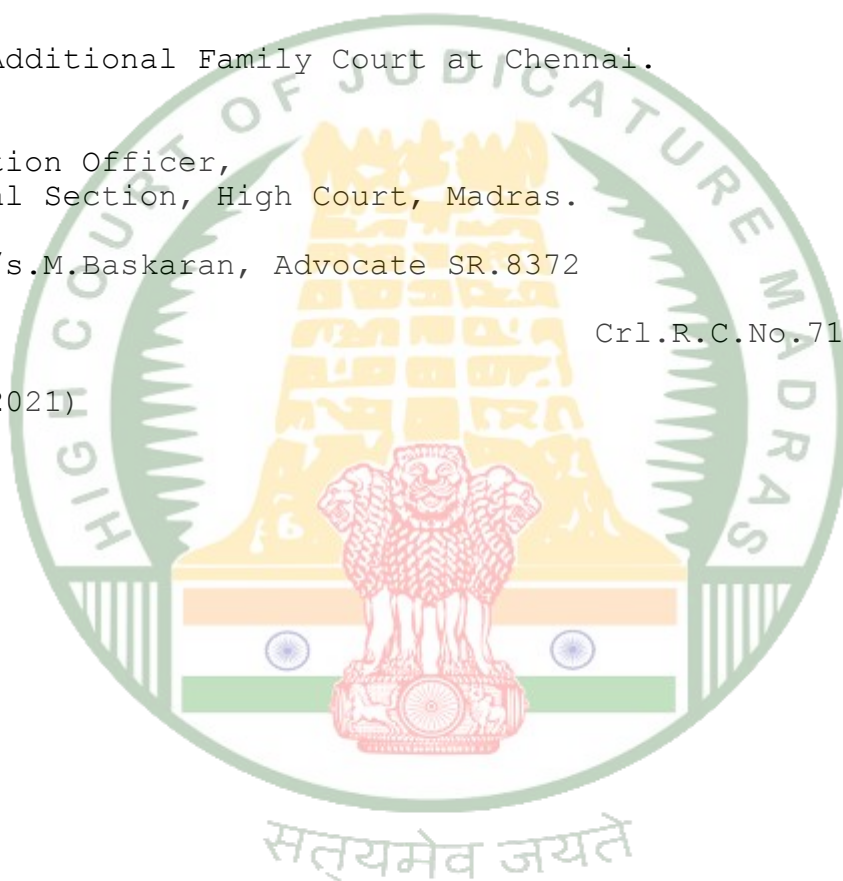
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2.The Section Officer,
Criminal Section, High Court, Madras.

+1cc to M/s.M.Baskaran, Advocate SR.8372

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GP(CO)
CB(10/03/2021)



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