

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1261 of 2020
and
Crl.M.P.No.8866 of 2020

Amaranadhan ... Petitioner
Versus
1.Gayathri
2.Minor Saran
Rep. by his mother
Tmt.Gayathri ... Respondents

PRAYER: Criminal Revision case is filed under Section 397 & 401 Cr.P.C seeking to allow the Criminal Revision Petition and set aside the order dated 18.06.2020 passed in M.C.No.5 of 2017 on the file of the learned Family Court, Thiruvallur.

For Petitioner : R.Abdul Mubeen
For Respondents : Mr.M.P.Saravanan

O R D E R

This Criminal Revision case has been filed seeking to set aside the order dated 18.06.2020 passed in M.C.No.5 of 2017 on the file of the learned Family Court, Thiruvallur.

2. The first respondent is wife and the second respondent is minor son of the petitioner. The respondents filed the petition before the Family Court, Tiruvallur under section 125 (1) Cr.P.C in M.C.No.5 of 2017 for maintenance. The learned Judge, Family Court after enquiry, found that the respondents are not having means to maintain and the petitioner is having sufficient means to maintain respondents. Despite that, he failed to maintain the wife and minor son. Therefore, the learned Judge, Family Court ordered a sum of Rs.7,000/- to the first respondent and a sum of Rs.8,000/- to the minor son. Challenging the said order passed by the Family Court, Thiruvallur, the petitioner approached this Court by way of this Revision.

3. The counsel for the petitioner would submit that he is only a coolli working in the Southern Railway, he is having aged old mother and he has to look after his mother. Further, he is getting only Rs.24,000/- per month, out of which, the maintenance is ordered as Rs.15,000/-. The learned Family Court Judge, failed to consider the financial capacity of the petitioner and mechanically ordered a sum of Rs.15,000/- maintenance per month, hence, it warrants interference.

4. The learned counsel for the respondents would submit that the petitioner's mother is getting pension for a sum of Rs.9,000/- and the petitioner is getting basic salary of Rs.24,000/- and the gross salary is Rs.43,500/-; apart from that, he is owning three houses and receiving the rents and he is a affluent person and having sufficient means and respondents are not having any means. But the petitioner failed to maintain his wife and his child. Therefore, the learned Judge, Family Court rightly found that the petitioner is having sufficient means and respondents not having any means and ordered a sum of Rs.7,000/- to the wife and Rs.8,000/- to the minor son respectively.

5. Heard and perused the records.

6. The relationship between the petitioner and respondents is not in dispute and the paternity of the child is not in dispute and both are living separately and the 1st respondent left the matrimonial home with valid reason. Therefore, now the quantum alone has to be decided. As far as quantum is concerned, though the petitioner has stated that he has ill health old age mother, the petitioner's mother receiving a sum of Rs.9,000/- pension per month is admitted. Therefore, the mother of the petitioner is not depending on the income of the petitioner or support of the petitioner. She is having independent means to maintain herself. He is working in the Southern Railway. Apart from that, the respondents proved that the petitioner is having three houses and is also receiving house rent. He is getting income by way of salary as well as from the house property. Therefore he has sufficient means to maintain. Despite having means, he is neglecting to maintain his wife and child, whereas respondents proved that they are not having any means to maintain. They are unable to maintain themselves. Therefore, under Section 125 Cr.P.C, a settled proposition of law is that if the wife/children unable to maintain themselves, when the husband/father is able to maintain them, he has to maintain the wife and children. But in this case, the respondents proved that the petitioner is having means and respondents have no means. Therefore, the learned Family Court Judge, rightly ordered.

7. Considering the financial capacity of the petitioner, the learned Judge, Family Court, ordered a sum of Rs.7,000/- to the wife and Rs.8,000/- to the minor son. This Court does not find any perversity in the order passed by the Court below and it is liable to be dismissed.

8. Accordingly, this Criminal Revision Petition is dismissed. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mpa

To

1. The Judge, Family Court, Thiruvallur.

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

+1cc to Mr.R.Abdul Mubeen, Advocate, S.R.No. 13475

+1cc to Mr.M.P.Saravanan, Advocate, S.R.No. 13463

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GMI (CO)
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