

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cr1.R.C.No.785 of 2019

Jeeva

... Petitioner

Versus

Kanchana

... Respondent

PRAYER: Criminal Revision petition is filed under Section 397 read with 401 Cr.P.C seeking to call for the records in M.C.No.5 of 2015 on the file of the learned Judicial Magistrate-I, Ponneri and set aside the order dated 21.05.2019 in M.C.No.5 of 2015, passed by the learned Judicial Magistrate-I, Ponneri.

For Petitioner : Mr.P.Udhayashankar

O R D E R

This Criminal Revision Petition has been filed seeking to call for the records in M.C.No.5 of 2015 on the file of the learned Judicial Magistrate-I, Ponneri and set aside the order dated 21.05.2019 in M.C.No.5 of 2015, passed by the learned Judicial Magistrate-I, Ponneri.

2. The respondent is the wife and the petitioner is husband. The respondent/wife filed petition under section 125 Cr.P.C before the learned Judicial Magistrate-I, Ponneri in M.C.No.5 of 2015. The learned Magistrate, after enquiry passed the order and directed the petitioner/husband to pay a sum of Rs.5,000/- per month as maintenance. Challenging the said order, the petitioner filed present revision before this Court.

3. The learned counsel for the petitioner would submit that the petitioner is only an agricultural cooli and her father has deposited a sum of Rs.10 Lakhs to the wife/respondent and the wife has withdrawn the said amount and she is enjoying the money. Whereas, the petitioner without having any means and being the agricultural cooli, is unable to maintain himself and therefore, he is not in a position to pay any maintenance to the respondent. But, the learned Magistrate failed to consider this aspect and mechanically ordered a sum of Rs.5,000/- as maintenance. When the petitioner is not earning the direction to

the petitioner that he should pay a sum of Rs.5,000/- is perverse and hence, warrants interference of this court.

4. Though the learned counsel for the petitioner would submit that he is only agricultural cooli, he is not having any income, in the affidavit filed in support of the petition, no averments is made to show his income capacity. He further submitted that her father has deposited a sum of Rs.10 Lakhs in the name of the wife/respondent. The wife/respondent is none other than his own sister's daughter and she made allegations on the character of the petitioner/husband. According to the petitioner, already she is enjoying with the money. Bu there is no proof filed before this court in respect of substantiating these submissions. The marriage is in subsistence. But no proof filed to show that the respondent/wife has withdrawn the amount deposited by her father in the name of the respondent. Therefore, in the absence of the same, this Court does not find any perversity in the order passed by the learned Magistrate and therefore, the revision is dismissed and the order of court below in M.C.No.5 of 2015 is confirmed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mpa

To

1.The Judicial Magistrate-I,
Ponneri.

2.-Do- Thro' The Chief Judicial Magistrate,
Thiruvallur.

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