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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2021

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Cr1.R.C.No.509 of 2017

A.Sudhakar

...Petitioner/Respondent

Vs.

1. R.Thenmozhi
2. Sadhasivam

...Respondents/Petitioner

Criminal Revision filed under Sections 397 and 401 Cr.P.C praying to allow the Revision petition and set aside the order dated 23.12.2016 in M.C.No.119/2009 on the file of the Learned Principal Family Judge at Chennai.

For Petitioner : Mr.V.T.Narendiran

For Respondents : Ms.E.Swetha

for Mr.T.K.S.Gandhi

O R D E R

This Criminal Revision case has been preferred challenging the common order of the learned Principal Judge, Family Court, Chennai dated 23.12.2016 passed in M.C.No.119 of 2009.

2. The petitioners are the wife and son of the respondent. The petitioners have filed a petition for claiming maintenance from the respondent. The learned trial Judge has allowed the petition and directed the respondent to pay a sum of Rs.10,000/- per month for each of the petitioners from the date of filing of the maintenance petition i.e., from 16.04.2009. Aggrieved over that, the present revision has been filed.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the entire materials available on record.



4. Point for consideration:-

Whether the maintenance awarded by the learned Family Judge is fair and proper and within the precedents of law?

5. The learned Family Judge has found that the respondents are entitled to get maintenance from the revision petitioner and fixed the quantum at Rs.10,000/- per month to each of the respondents. The submission of the learned counsel for the petitioner is that the petitioner does not derive sufficient income to meet out the maintenance amount as ordered by the Family Court. His further contentions is that the first respondent herself is employed in a school as a primary school Teacher and getting salary of Rs.15,000/- and hence, the Family Court ought to have dismissed the petition for claiming maintenance; she has suppressed the real fact before the Court and hence, the revision case should be allowed.

6. The learned counsel for the respondents submitted that the petition has been filed in the year 2009; the first respondent did not deny the fact that she is employed as a primary school teacher and she is earning Rs.15,000/- per month; the learned Family Court Judge adverted into the financial capacity of both the parties; the Court took into consideration of the cost of living and other factors and fixed the maintenance reasonably and hence the order of the Family Court Judge does not require any interference.

7. Admittedly, the petition has been filed in the year 2009. The relationship between the parties is not in dispute. There cannot be any disagreement on the point that the revision petitioner, being the husband of the first respondent and the father of the second respondent is bound to maintain them, even if there might be some marital discard between the couples. Despite the revision petitioner produced certain documents to show that the first respondent is employed as a primary school teacher, it is not established before the Court that she was employed in the same post or under any other post at the time of filing of maintenance petition. No doubt the first respondent, being employed as a school teacher might earn some income every month. But what has to be appreciated while fixing the amount of maintenance is the status of the parties and their capability to earn income in accordance with their living standards, with which they are put up in life.



8. It appears from the evidence of the revision petitioner himself that he is a Director of a company, which is engaged in recruiting staffs to various organisations. Apart from that he has claimed that his monthly income is Rs.6,000/- and he has filed the income tax returns to show that he is earning only Rs.72,000/- per year. Being the Director of a company, which is being run by the revision petitioner, he must be having the discretion to fix his salary. Whatever income declared by the revision petitioner is his own declaration and it cannot be substantiated by any other independent document by the respondent. Even while filing the income tax returns, it is the petitioner who had declared his income. Unlike the first respondent/wife is being paid by school management under whose custody the salary register and other details are available and it can be produced, the documents with regard to the real income of the petitioner cannot be produced by the first respondent.

9. In such circumstances, the Courts below are bound to exercise common sense and find out the financial capability of the revision petitioner by taking into consideration of his occupation and other attendant circumstances. The revision petitioner is not only a Director of the Company, he has also employed an administrative officer. A company, which derives a very meagre income cannot have the luxury of appointing staff members and pay their salaries. Even it is taken to be true that the revision petitioner is getting a monthly income of Rs.6,000/- only for being the Director of the company, the Administrative Officer cannot be recruited on paying a meagre salary of Rs.6,000/- per month. Hence, it is needless to state that all the figures about the income of the Revision Petitioner is his own invention and declaration and about which, the first respondent cannot have any control. The Revision Petitioner is doing a business and in which he has the convenience of concealing the real income. That will not deprive the first respondent from getting reasonable amount as maintenance.

10. With her salary of Rs.25,000/- per month the first respondent cannot pay the rent, educate her son and take care of the food and medical expenses of the Family. Further, being the wife of the Director of a company, her life standards should be matching to her husband. The standard of life that should be given to the second respondent also cannot be compromised because of the marital dispute between the Revision Petitioner and the first respondent.

11. The learned counsel for the revision petitioner submitted that after the case was filed, the revision



petitioner's business went in loss. In all maintenance cases, the husband is bound to pay maintenance, but it is routine defence that the husband does not have any occupation or income to pay maintenance. Even if it is taken for the sake of argument that the company run by the revision petitioner had gone into loss, there is no reason for him to continue to run the business. Even a husband, who does not have any employment also bound to maintain his wife and child and provide them the reasonable standard of life by finding out some job and earning income.

12. The learned Family Judge has rightly appreciated the facts and circumstances placed before the Court and it does not suffer from any factual or legal infirmity. The wife, who has filed a claim for maintenance in the year 2009 had been successfully prevented from enjoying the fruits of this order. Excepting the bitterness that was in the mind of the revision petitioner, I find no other reason to challenge the order of the Family Court and to fight it so hard. The case of the Revision Petitioner does not have any assert.

13. In the result, this Criminal Revision Case is dismissed and the order dated 23.12.2016 made in M.C.No.119/2009 passed by the learned Principal Family Judge, Chennai is hereby confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmi

To

1.The Principal Family Judge,
Chennai.

2. The Section Officer
Criminal Section
High Court, Madras 104.

+2 Ccs to Mr.V.T.Narendiran, Advocate sr 65779.

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CA(CO)
SP(20/01/2022)