

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1400 of 2019 &
Crl.M.P.No.18330 of 2019

E.Sathiyavel

...Petitioner/Respondents

Vs.

1. S.Savithiri
2. Minor S.Meghana
(Rep. by her mother and
natural guardian first respondent)
No.86, Valluvar Kuppam,
Corporation School Road,
Nungambakkam, Chennai - 600 034.

...Respondents/1 and 2nd Petitioner

PRAYER: Criminal Revision Case filed under 397 r/w 401 of Cr.P.C. to set aside the order passed by the learned VII Additional Family Judge, Chennai in M.C.No.309 of 2015, dated 13.03.2019.

For Petitioner : Mr.P.Paramasiva Doss
For Respondents : Mr.H.Krishna Raj

O R D E R

This Criminal Revision Case has been filed to set aside the order made in M.C.No.309 of 2015, on the file of learned VII Additional Family Judge, Chennai, dated 13.03.2019.

2. The petitioner is the husband and the first respondent is the wife and the second respondent is the daughter. The first respondent / wife filed a petition in M.C.No.309 of 2015, on the file of the learned VII Additional Family Judge, Chennai, seeking maintenance for herself and her daughter. The learned VII Additional Judge, [Family Court], Chennai, after consideration of oral and documentary evidence, ordered a sum of Rs.7,500/- to the second respondent, and dismissed the claim as against the first respondent-wife. Challenging the said order, the father of the minor is before this Court.

3. The learned counsel for the petitioner would submit that both the petitioner and the first respondent are practising advocates at Tindivanam and Chennai respectively. It is submitted that the first respondent-wife deserted the petitioner on her own volition and left the matrimonial home and at present, she is residing in Chennai and doing active practice and earning a good salary. Since the first respondent can maintain herself, the learned VII Additional Family Court, Chennai, disallowed the maintenance claim of the first respondent, however, ordered maintenance of Rs.7,500/- per month, in respect of the claim of the second respondent-daughter. It is contended by the learned counsel that the petitioner has enrolled as an Advocate only in the year 2013 and at present working as a junior in a District Court, Tindivanam and getting meagre income of Rs.5,000/- to Rs.10,000/- per month, and as such he could not pay the maintenance ordered by the learned VII Additional Family Court, Chennai, to a sum of Rs.7,500/- per month and therefore, prays for reducing the maintenance amount.

4. On the other hand, the learned counsel for the respondents would submit that the first respondent is also practising as a junior advocate and the claim of the respondent/wife for maintenance was dismissed and she has to take care of her minor daughter, the second respondent herein, and the learned VII Additional Judge, [Family Court], Chennai, has awarded only a sum of Rs.7,500/- as against the original claim of Rs.10,000/- and as such, no interference is required.

5. Heard the learned counsel on either side and perused the materials available on record.

6. It is an admitted fact that the first respondent is legally wedded wife of the petitioner and the second respondent was born to them. It is also further admitted that due to some matrimonial dispute, the first respondent is now living separately along with her daughter. Though the learned VII Additional Judge, [Family Court], dismissed the claim as against the first respondent/wife, ordered a sum of Rs.7,500/- to the second respondent-daughter. According to the petitioner-husband, he has enrolled as an Advocate only in the year 2013 and at present earning Rs.5,000/- to Rs.10,000/- per month only, and therefore, could not pay the maintenance to the second respondent-daughter, as per the findings given by the learned Judge, Family Court.

7. Considering the above fact and also taking note that the first respondent-wife has not established the actual income of the petitioner-husband and considering the fact that the petitioner-husband had spent the marriage expenses of

Rs.6,00,000/- and the first respondent's family had spent only Rs.21,500/-, and as such, the contention of the learned counsel that the petitioner-husband would not be in a position to pay a sum of Rs.7,500/- to her daughter, the second respondent, is believable. Since the first respondent-wife was having sufficient means to maintain herself, the claim as against the first respondent-wife was dismissed. Now, the minor daughter is with her mother, the first respondent herein is also one of the natural guardians and also practising Advocate, and as such, she is also equally liable to maintain her daughter.

8. In the above circumstances, the petitioner is directed to pay a sum of Rs.5,000/- as monthly maintenance to the second respondent-daughter, instead of Rs.7,500/- as ordered by the trial Court. The petitioner is directed to pay or deposit the entire arrears of maintenance, after deducting the amount, if any paid already, as per the findings of this Court, in a lumpsum within a period of one month and thereafter, continue to pay the maintenance amount every month on or before 5th every English Calendar month regularly, without fail. In case of default in payment of the maintenance amount, the respondents shall have the liberty to bring it to the notice of the learned VII Additional Judge, Family Court, Chennai and the learned Judge, shall pass necessary orders. Consequently, connected miscellaneous petition is closed.

s/d
Assistant Registrar

True Copy

Sub-Assistant Registrar

r n s

To

The VII Additional Judge, Family Court,
Chennai.

+lcc to Mr.P.Paramasivadosh, Advocate, SR.No.4662

+lcc to Mr.H.Krishnaraj, Advocate, SR.No.4482

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PP(CO)
KKV/10/03/2021