

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1461 of 2019

1.S.Chitrasena

2.V.C.Devakeerthana

(Rep by Mother and natural guardian the Ist Petitioner)

... Petitioners/petitioners

Versus

A.Vijayanand

... Respondent/Respondent

PRAYER: Criminal Revision petition is filed under Section 397 & 401 Cr.P.C seeking to set aside the order and decree made in M.C.No.360 of 2015 dated 30.09.2019 by the learned V Additional Family Court, Chennai directing the respondent to pay Rs.20,000/- towards maintenance.

For Petitioners : Mr.Sudharshana Sunder

For Respondent : Mr.C.D.Sugumar

O R D E R

This Criminal Revision Petition has been filed seeking to set aside the order and decree made in M.C.No.360 of 2015 dated 30.09.2019 by the learned V Additional Family Court, Chennai directing the respondent to pay Rs.20,000/- towards maintenance.

2. The respondent is the husband of the first petitioner and father of the second petitioner. The first petitioner and the respondent got married on 3.9.2008; out of their wedlock, second petitioner/child was born. Thereafter due to misunderstanding, the petitioners are living separately and the respondent is living separately. Therefore, the petitioners had filed the maintenance case before the learned V Additional Family Court, Chennai in M.C.No.360 of 2015. The learned Judge, V Additional Family Court, after enquiry dismissed the petition. Challenging the said order, now the petitioners filed the present revision petition before this Court.

3. The learned counsel for the petitioners would submit that the petitioners had filed case for maintenance in

M.C.No.360 of 2015 before the Judge, Family Court for herself and her minor daughter. 1<sup>st</sup> petitioner/wife is now a qualified doctor, but, at the time of filing the case, she was studying. Thereafter, she got employment and therefore, she does not claim the maintenance from her husband/respondent. However the minor daughter is 10 years old and she is with the first petitioner/mother. The learned Judge, Family Court, without considering the fact that the minor daughter is in the custody of the first petitioner/wife, stated that she is doctor and she is able to maintain herself and her child and also stated that the respondent taken a LIC policy for a sum of Rs.5,00,000/- in favour of the daughter, therefore dismissed the petition. According to the learned counsel, the reason assigned by the Judge, Family Court, for dismissing the maintenance petition on the basis of the salary of the 1<sup>st</sup> petitioner is not legally sustainable. Therefore, it warrants interference.

4. The learned counsel for the respondent would submit that the first petitioner/wife refused to even show the daughter to respondent/husband and he has taken LIC policy in the name of the minor daughter for a sum of Rs.5,00,000/- and since the first petitioner/wife is doctor and she is able to maintain herself, she is not entitled to get any maintenance amount. The first petitioner has not shown any receipt for paying school fees to the second petitioner and respondent does not know where the child is studying. The learned Judge, Family Court, discussing all the said points, had rightly dismissed the petition and the respondent is ready to take care of the second petitioner only. Therefore, first petitioner is not entitled to any maintenance amount.

5. Heard and perused the records.

6. Admittedly, the marriage between the first petitioner and respondent was solemnized on 03.09.2010. Out of their wedlock, they were blessed with one child by name V.C.Devakeerthana. The paternity of the child is not in dispute and the minor daughter is only with the custody of the first petitioner/mother. Admittedly, both the first petitioner and the respondent are qualified doctors and also serving in the Government Hospital. They are public servant and receiving lump sum salary. But both father and mother are guardian for the minor daughter and both are capable to maintain minor daughter till she gets married or gets job and now minor daughter is in the custody of the mother/first petitioner. Even though she is a doctor and she is able to maintain herself, the respondent cannot abstain himself to maintain her daughter because the respondent is also a qualified doctor and he is also serving in the Government Hospital and earning lump sum salary and the parents are liable to maintain the minor daughter. Therefore,

under these circumstances, without considering the legal as well as economic status of the minor daughter, the Judge, Family Court, disallowed the maintenance petition for the daughter who was also a party. Therefore, this Court finds that the order disallowing the maintenance, passed by the Judge, Family Court, is not sustainable and the same is liable to be set aside.

7. Considering the contentions raised on the side of the petitioners and also on the side of the respondent, though the petition for maintenance is dismissed against the first petitioner, this Court does not find any reason to interfere with the said findings given against the first petitioner.

8. Therefore, the Revision petition is Partly allowed. As far as the first petitioner is concerned, the Revision is dismissed. Further the respondent is directed to pay a sum of Rs.15,000/- per month to the daughter/2<sup>nd</sup> petitioner every month on or before 5<sup>th</sup> of the English Calendar month from the date of the petition till the minor daughter gets married or job which ever is earlier.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mpa  
To

The Judge,  
V Additional Family Court,  
Chennai.

+1cc to M/s.Sudharsana Sundar, Advocate Sr.9741  
+1cc to Mr.C.D.Sugumar, Advocate sr.9437

Cr1.RC.No.1461 of 2019

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srg 22/03/2021