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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.R.C.No.1487 of 2018
and
Crl.M.P.No.17425 of 2018

G.Kannan

...Petitioner

Vs.

1. Meena @ Sheela

2. Minor Reshma

Rep. by her mother/first respondent

...Respondents

Prayer: This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to set aside the order dated 05.09.2018 in M.C.No.30 of 2014 on the file of the Family Judge, Salem.

For Petitioner : Mr. D.Ashok Kumar

For Respondents : Mr.K.M.Ramesh

For Mr.J.Sundara Kanchani

O R D E R

The Criminal Revision Case has been filed to set aside the order in M.C.No.30 of 2014 dated 05.09.2018 passed by the Family Court, Salem.

2. The petitioner and the first respondent are husband and wife. The second respondent is the minor daughter of them. The marriage was solemnized between the petitioner and the first respondent on 13.09.1999 at Salem. After the marriage, the first respondent was living in a matrimonial home as joint family. Out of such wedlock, the second respondent was born. The first respondent went to her parents house for her delivery, but she never came back to the matrimonial house due to the difference of opinion. Therefore, the petitioner has filed a divorce petition before the Family Court Chennai in OP.No.928 of 2005 for desertion and cruelty. During pendency of the said OP, the



first respondent filed IA.No.1303 of 2005 seeking interim maintenance and the Family Court was also directed the husband to pay a sum of Rs.2,900/- as interim maintenance and Rs.5,000/- for litigation expenses. On 13.02.2014 the said divorce petition was dismissed. Thereafter, the first respondent filed a maintenance case under Section 125 of Cr.P.C. claiming a sum of Rs.5,000/- per month each. The learned Family Court Judge, has failed to consider the oral and documentary evidence, allowed the petition in part and directed the petitioner to pay the maintenance of Rs.3,000/- per month each of the respondent. As against the order of the learned Family Court Judge, the present Revision has been filed before this Court.

3. The learned counsel for the petitioner submitted that after the marriage, the first respondent has not taken care of his husband and his parents. Without any reason, on her own, the first respondent left the matrimonial home. The first respondent has voluntarily deserted her husband and therefore, she is not entitled to claim any maintenance from the petitioner. The learned counsel further submitted that the petitioner is not in a position to pay any maintenance to the respondents. The reason stated in affidavit filed by the first respondent before the Family Court has been entirely wrong and without considering all the facts, the Family awarded a sum of Rs.3,000/- per month to each of the respondent, is very high. Hence, the learned counsel prays to allow this petition.

4. The learned counsel for the respondents submitted that the petitioner and the first respondent are living separately and the second respondent is under the care and custody of the first respondent. The respondents are not having any income to maintain them. The petitioner and his family members harassed the first respondent and driven out her from the matrimonial home and thereafter, the petitioner filed divorce petition before the Family Court, Chennai and the same was dismissed. Therefore, it is evident that the respondents are not living with the petitioner and the petitioner as a husband and father respectively, is liable to maintain the wife and son and further, the respondents are entitled for maintenance under Section 125 Cr.P.C. The Family Court awarded a sum of Rs.3000/- per month to each of the respondent, which is very low. However, the learned counsel prays to dismiss this petition.

5. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

6. It is not in dispute that the petitioner herein and the first respondent are husband and wife, their marriage was also admitted; paternity of the second respondent is also admitted;



and both are living separately. Therefore, now the only question is whether the respondents are having sufficient means to maintain them and whether the petitioner is liable to pay maintenance amount under Section 125 Cr.P.C.

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7. It is the case of the revision petitioner that the first respondent left the matrimonial home on her own volition and also she refused to join with the petitioner. Therefore, the petitioner filed the petition for divorce before the Family court and the same was dismissed. Further she herself without any reason neglected to join with the revision petitioner. Hence, the revision petitioner is not liable to maintain the respondents.

8. It is the case of the respondents that the petitioner and respondents are living separately. Out of the struggle, she got the maintenance for her and her minor daughter i.e. second respondent. There is no sufficient means to maintain them. Since, the marriage is not disputed; and the paternity of the second respondent is also not disputed; and the petitioner has not proved that the respondents are having sufficient means to maintain them. Therefore, the learned Family Court rightly allowed the petition in part and directed the petitioner to pay a sum of Rs.3,000/- each per month which does not warrants any interference.

9. On a perusal of the materials, it is seen that the petitioner is husband and the first respondent is wife and they are living separately. The learned Family Court Judge directed the petitioner to pay a sum of Rs.3000/- per month to the respondents each. If the revision petitioner is not liable to pay the maintenance, he has to prove that the respondents are having sufficient means and she voluntarily deserted her husband. There is no evidence to show that the respondents are having sufficient means to maintain them and the first respondent has voluntarily deserted her husband. Therefore, the revision petitioner is liable to pay the maintenance to the respondents under Section 125 Cr.P.C. There is no reason to interfere with the order passed by the learned Family Court Salem in M.C.No.30 of 2014, dated 05.09.2018 and there is no merit in the revision.

10. Under these circumstances, the respondents are entitled to get maintenance from the petitioner. The petitioner is directed to continue to pay the maintenance to the respondents as ordered by the Family court, Salem in MC.No.30 of 2014 dated 05.09.2018 on or before 5th day of every English Calender month without any default.. The petitioner is directed to deposit the entire arrears of maintenance, less the amount, if any, already



deposited, within a period of four weeks from the date of receipt of a copy of this order.

11. With the above observation and direction, the Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rli

To

The Family Court,
Salem.

+2CCs to Mr.D.Ashokkumar, Advocate, Sr.No.40900
+1CC to Mr.J.Sundarakanchani, Advocate, Sr.No.40826

Cr1.R.C.No.1487 of 2018
and
Cr1.M.P.No.17425 of 2018

SS (CO)
K.RK. (22.11.2021)