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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2022

PRONOUNCED ON : 28.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CrI.R.C.No.17 of 2020
and CrI.M.P.No.100 of 2020

Venkatesan

...Petitioner/Respondent

versus

1.Renuka

2.Bharathi Mohan

...Respondents/Petitioners

PRAYER: Criminal Revision Petition has been filed under Section 397 & 401 of the Code of Criminal Procedure, praying to set aside the order dated 25.09.2019 made in M.C.No.5 of 2017 on the file of the learned Principal Judge, Principal Family Court, Coimbatore and discharge the petitioner from the above case.

For Petitioner : Mr.K.Sankararaman

For Respondents : Mr.M.Arunachalam

O R D E R

This Criminal Revision Petition has been filed, seeking to set aside the order dated 25.09.2019 passed in M.C.No.5 of 2017 by the learned Principal Judge, Principal Family Court, Coimbatore.

2.The facts of the case is that the revision petitioner is the husband of the first respondent. The first respondent/wife had filed a petition in M.C.No.5 of 2017 under Section 125 of Cr.P.C., seeking maintenance from the petitioner/husband for herself and for her son, who is arrayed as second petitioner. The learned Principal Judge, after affording an opportunity to the revision petitioner, by order dated 25.09.2019 came to the conclusion that the petition filed by the first respondent/wife is allowable and also directed the petitioner to pay monthly maintenance for a sum of Rs.9,000/-. Further, the learned Judge has directed the petitioner to pay a sum of Rs.10,000/- towards expenses of the proceedings. Apart



from that, the learned Judge directed the revision petitioner to pay a sum of Rs.3,000/- towards the maintenance of the second petitioner, till he attained majority. Challenging the said order, the revision petitioner is before this Court with the present Criminal Revision Petition.

3. Heard both sides at length and perused all the material records.

4. It is not in dispute that the first respondent/wife is the legally wedded wife of the petitioner. The second respondent is the son born to the petitioner. Ofcourse, for awarding maintenance and also for awarding litigation expenses, it would necessary to see whether the wife is unable to maintain herself and whether the petitioner has refused or neglected to maintain her wife and son after having sufficient means.

5. Initially, it is the contention raised by the learned counsel appearing for the revision petitioner that, the first respondent/wife voluntarily refused to live with the revision petitioner. But in this regard, in order to prove the same, except the oral evidence given by him, nothing was shown by the petitioner as his wife voluntarily refused to live with him. If really, the petitioner intends to get rid of the payment of maintenance to his wife, is at liberty to plead and prove any of these three things, namely, adultery, refusal to live and living separately by mutual consent. Here, it is a case, the revision petitioner has not shown any substantial materials with regard to the above reasons to prove that, he is not having any liability to pay the maintenance.

6. It is admitted case on either side that, the petitioner / husband along with his second child is residing in Appanaickenpalayam, Coimbatore. On the other hand, the wife along with her first child is residing at BSNL Quarters, GN Mills, Coimbatore. The said circumstances also shows that the wife is voluntarily residing at BSNL Quarters, GN Mills, Coimbatore. Therefore, we have come to the conclusion that the question of refusal by wife is not proved and therefore, the revision petitioner is liable to pay the maintenance under Section 125 Cr.P.C.

7. In respect of the second respondent, the child born to the petitioner and first respondent, before the trial Court the Birth Certificate of the second petitioner was marked as Ex.P.4. The details found in the said certificate would



disclose the fact that the Date of Birth of the second respondent is 27.06.2001 and therefore, it is clear that he was minor at the time of presenting the maintenance case and now, he has attained majority on 13.05.2019. Therefore, the petitioner is liable to pay the maintenance to the second respondent only upto 13.05.2019.

8.Coming to the inability of the wife to maintain herself, it is for the petitioner to prove that she is able to maintain herself. In this regard, though it was contended on the side of the revision petitioner that, the first respondent/wife being employed at a private concern and earns upto Rs.10,000/- per month. In order to substantiate the same, he has not shown any record as she was employed in a private concern. If the said stand taken by the revision petitioner is found correct, it is very easy for him to call for the records from the said concern and prove his case as his wife is earning a sum of Rs.10,000/- per month. Therefore, in the absence of any evidence to show that his wife is earning such amount, we cannot conclude that she is able to maintain herself. Therefore, in this area also, the revision petitioner fails to prove that his wife is able to maintain herself.

9.One another aspect, which is necessary to decide in this Revision Petition is that, whether the revision petitioner is having sufficient means to pay the maintenance. In this regard, in the impugned order, the learned Judge has correctly held that the evidence given by the revision petitioner shows that he was working as an Administrative Officer in the office of Joint Director of Agriculture, Coimbatore. Apart from that, the salary certificate pertains to the income received by the revision petitioner was marked before the trial Court as Ex.X.1. The said certificate pertains to the month of November 2018. The said certificate is evident to show that the revision petitioner has received a total salary of Rs.65,488/- and after deductions, he received Rs.41,320/- as net amount.

10.It is settled law for computing the quantum of maintenance net salary is to be calculated after deducting from the gross salary only the statutory deductions and not the voluntary ones. Here, it is a case, the salary certificate produced before the trial Court would show that the revision petitioner paid Rs.14,000/- to NSD scheme. Further, he paid Rs.10,000/- for GPF subscription and the same shows that he received around Rs.50,000/- after deducting the statutory deductions.



11. In fact, there is no restriction under Section 125 Cr.P.C. that the Judge cannot award more than the award claimed in the petition. The quantum of maintenance is to be awarded on the basis of income and the earning capacity of the husband, his liabilities, the basic needs of the applicant, the status of the parties and other relevant circumstances. Here, it is a case, admittedly, the revision petitioner is living with his second son and maintaining him by providing requirements. In this occasion, the general reasonable rule is to charge 1/5th of the income of the husband for the purpose of awarding maintenance to the wife, subject to the condition where the husband is employed and has earning capacity. In this case, it was admitted that the revision petitioner is employed and having earning capacity to the tune of Rs.50,000/-. Therefore, awarding Rs.9,000/- to his wife as maintenance is not an excessive one. Further, awarding Rs.10,000/- as the expenses of the proceedings is also not excessive one. The trial Court only after considering those aspects, determined the above mentioned amount and directed the petitioner to pay to the first respondent/wife. Further, the trial Court has correctly held that the second respondent, who is the son born to the revision petitioner, is entitled to receive Rs.3,000/- till he attained majority. Therefore, this Court finds that there is no error found in the order passed by the trial Court.

12. Resultantly, this Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

sri

To

The Principal Judge,
Principal Family Court,
Coimbatore.



Copy to:

The Section Officer,
Criminal Section (Records)
High Court, Madras.

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+1cc to Mr.S.Sathish Rajan, Advocate SR.No.20808

+1cc to Mr.AR.M.Arunachalam, Advocate SR.No.20488

Crl.R.C.No.17 of 2020
and Crl.M.P.No.100 of 2020

MT (CO)
CB (08/04/2022)