



Crl.RC.No.117 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.117 of 2021
and
Crl.M.P.No.2335 of 2021

E.Kishore Kumar

...Petitioner/Respondent

-Vs-

1. K.Saranya

2. K.Heerasri

(minor aged about 6 years)

Daughter of E.Kishore Kumar

Represented by Mother &

Natural Guardian K.Saranya

...Respondents/Petitioners

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to call for the records in M.C.No.473 of 2017 and revise the order passed by the learned V Additional Judge, Family Court, Chennai.

For Petitioner : Mr.P.Sidharthan

For Respondents : Mr.K.T.S.Sivakumar



WEB COPY



Crl.RC.No.117 of 2021



Crl.RC.No.117 of 2021

WEB COPY

ORDER

This Criminal Revision has been filed to revise the order passed by the learned V Additional Judge, Family Court, Chennai in M.C.No.473 of 2017 dated 12.11.2019.

2. The petitioner is husband, the first respondent is wife and the second respondent is daughter. Originally, the respondents filed maintenance case in M.C.No.473 of 2017 before the V Additional Family Court, Chennai, seeking monthly maintenance of Rs.50,000/- for the first respondent and Rs.20,000/- for the second respondent. The learned V Additional Judge, Family Court, after hearing both the parties and after analysing the documents on record, by order dated 12.11.2019, partly allowed the petition and ordered maintenance of Rs.15,000/- p.m for the first respondent and Rs.5,000/- p.m for the second respondent.

3. Challenging the order passed by the learned V Additional Judge, Family Court in the Maintenance case filed by the petitioners/wife and daughter under Section 125 Cr.P.C, present appeal has been filed.



Crl.RC.No.117 of 2021

WEB COPY

4. The learned counsel appearing for the petitioner/husband would submit that prior to Covid 19 pandemic, the Petitioner herein/husband is getting a salary of Rs.35,000/-. Due to pandemic, he lost his job and now only he got a job and getting a salary of Rs.12,000/-. The learned V Additional Judge, Family Court without considering the monthly emolument of the Petitioner, has erroneously ordered maintenance of Rs.15,000/- p.m for the first respondent and Rs.5,000/- p.m for the second respondent, which is more than the income of the petitioner/husband. The petitioner filed a petition under Section 9 of Hindu Marriage Act for the restitution of conjugal rights and now the first respondent without any valid reason failed to live with the petitioner. As per section 125 of Hindu Marriage Act, if the wife left her husband without any valid reason, she is not entitled to get maintenance from her husband. However, without any materials, the learned V Additional Judge, Family Court drawn adverse inference and partly allowed the petition. Therefore, he seeks to set aside the order of maintenance.

5. The learned counsel appearing for the respondent/wife would



Crl.RC.No.117 of 2021

submit that the petitioner himself had admitted that he has family property and ancestral property and earning more than Rs.75,000/- from his business at the time of Maintenance case proceedings and the Maintenance Case is of the year 2017. Till such time, he has not paid single paise for the maintenance ordered by the Family Court and therefore, the learned Judge has directed him to pay a sum of Rs.50,000/-. Therefore, the learned V Additional Judge, Family Court considered the fact and ordered monthly maintenance, which is well founded and does not call for any interference.

6. The learned counsel for the petitioner vehemently objected that at the time of admission, as per the direction of this Court, he had deposited 50% of the total arrears of maintenance amount for the education and personal expenses for the second respondent. He also filed the proof of the same before this Court.

7. Heard the learned counsel for the petitioner and the respondents and perused the records.

8. Admittedly, the petitioner is husband, the first respondent is wife



Crl.RC.No.117 of 2021

and the second respondent is the daughter. The relationship between the parties are not in dispute. Both are living separately and HMOP is pending before the court below and it is also not in dispute. The Family Court has ordered maintenance of Rs. 15,000/- p.m for the first respondent and Rs.5,000/- p.m for the second respondent. Challenging the order of maintenance mainly on the ground that he has not having sufficient means to pay such amount of Rs.20,000/- p.m as maintenance.

9. On a perusal of the records and affidavit filed by the petitioner and the counter filed by the respondents, it is found that the relationship between the parties are admitted and prior to the filing of this petition, he is getting a salary of Rs.35,000/- p.m. Due to pandemic, he lost his job and now only he got a temporary job and getting a sum of Rs.12,000/- p.m. However, the learned counsel for the respondent submitted that the petitioner herein is having ancestral property and he is from a well to do family. As per the direction of the Hon'ble Supreme Court reported in **2021 2 SCC 324** in the case of **Rajnesh Vs. Neha and another**, parties to the Maintenance Case have to file statements of assets and liabilities. Ignoring the same and without any materials regarding the monthly income of the petitioner, the



Crl.RC.No.117 of 2021

learned V Additional Judge, Family Court has passed order. In the absence of the statement of assets and liabilities, this Court is not inclined to confirm the order of the learned V Additional Judge, Family Court. Therefore, the order passed by the learned V Additional Judge, Family Court is set aside and the matter is remitted back to the learned V Additional Judge, Family Court, Chennai and both the parties are directed to file their statement of assets and liabilities within a stipulated period of three weeks from today i.e., on or before 18.11.2022 before the learned V Additional Judge, Family Court, Chennai.

10. On receipt of the same, since the case is of the year 2017, the learned V Additional Judge, Family Court, Chennai is directed to decide the case in M.C.No.473 of 2017 based on the materials are to be produced by both the parties on merits, in accordance with law on or before 23.12.2022, both the parties are directed to extend their fullest cooperation for the disposal of the case.

Accordingly, the criminal revision Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.



Crl.RC.No.117 of 2021

28.10.2022

WEB COPY

Index : Yes/No

Speaking order/non speaking order

dh

Note: Issue Order Copy on 04.11.2022



Crl.RC.No.117 of 2021

To
WEB COPY The V Additional Judge,
Family Court,
Chennai.



WEB COPY



Crl.RC.No.117 of 2021

P.VELMURUGAN, J.,

dh

Crl.RC.No.117 of 2022

28.10.2022