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CrI.R.C.No.418 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.R.C.No.418 of 2022

A.T.R.Kumar

... Petitioner

Versus

1. Karpagam

2. Minor K.Rakeshraj

... Respondents

Prayer: Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C, to call for the records relating to the order, dated 07.12.2020 passed in F.C.M.C.No.12 of 2016 on the file of the Family Court, Vellore, Vellore District under Section 125 of Cr.P.C., and set aside the same.

For Petitioner : Mr.P.Mani

For Respondent : No Appearance

ORDER

This Revision Case is filed against an order of the Family Court, Vellore, dated 07.12.2020 in F.C.M.C.No.12 of 2016, in and by which, the Family Court had ordered a monthly maintenance of Rs.10,000/- per month each to the first respondent/wife and the second respondent/son.

2. The contention of the learned Counsel for the petitioner is that the



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petitioner and the first respondent got married on 21.11.2001 and the respondent/wife deserted the petitioner as on 30.12.2002 itself. The petitioner, therefore, filed H.M.O.P.No.140 of 2012 which was decreed exparte on 03.10.2012 on the ground of desertion. The said decree of divorce has become final and no application whatsoever has been filed by the first respondent/wife to set aside the same in any manner. While so, belatedly, on 05.03.2016, she filed the present F.C.M.C.No.12 of 2016 claiming maintenance for herself as well as the son, in which, the present order under revision is passed by the Trial Court on 07.12.2020.

3. Even though notice has been served, there is no representation for the respondents.

4. The contention of the learned Counsel for the petitioner is that even though, a divorced wife is still entitled for maintenance under Section 125 of the Code of Criminal Procedure, however, if the divorce is granted on the ground of desertion, then Section 125(4) of the Code of Criminal Procedure comes into operation, which categorically lays down that no wife shall be entitled to receive an allowance for the maintenance or interim maintenance and expenses of proceedings as the case may be from her



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husband under the section, if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband. In this case, the effect of the decree of divorce granted on the ground of desertion is that she is living separately without any sufficient reason and therefore, in view of the decree of divorce, the first respondent/wife is not entitled for maintenance. There is force in the said contention of the learned Counsel for the petitioner and accordingly, I agree with the same and I hold that the order of the Trial Court is unsustainable inasmuch as the first respondent/wife is concerned, thereby, it is seen that she is living separately from the year 2002 onwards and belatedly after the divorce in the year 2016, the petition for maintenance has been filed.

5. But, however, no exception can be taken for the award of maintenance in respect of the second respondent/son. The learned Counsel for the petitioner would submit that the quantum of maintenance is on the higher side. However, considering the overall facts and circumstances of the case and the fact that the petitioner is an agriculturist as well as civil contractor, undertaking minor contracts of road works with the P.W.D, I am of the view that the award of the sum of Rs.10,000/- per month is on the higher side and accordingly, the same is confirmed.



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6. In the result, this Criminal Revision Case is partly allowed as follows:-

(i) The order of the Family Court, Vellore, dated 07.12.2020 in F.C.M.C.No.12 of 2016 is confirmed inasmuch as it grants maintenance of Rs.10,000/- to the second respondent/second petitioner/son, namely *K.Rakeshraj* and the said order is set aside inasmuch as it grants maintenance of Rs.10,000/- to the first respondent/first petitioner/wife, namely *K.Karpagam*;

(ii) The second respondent/second petitioner is entitled for maintenance till the date of attaining of his majority.

(iii) Consequently, Crl.M.P.No.7994 of 2022 is closed.

06.07.2022

Index : yes/no
Speaking/Non-speaking order
grs

To

The Family Court, Vellore,
Vellore District.



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D.BHARATHA CHAKRAVARTHY, J.

grs

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