



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Cr1.R.C.No.249 of 2021

Syed Khader

... Petitioner

Versus

Syed Abdul Rahim

... Respondent

Prayer: Criminal Revision Case filed under Section 397 and 401 Cr.P.C., to set aside the order, dated 03.02.2021 passed by the learned V Additional Principal Judge, Family Court, Chennai in M.C.No.353 of 2018 filed under Section 125 of Cr.P.C.

For Petitioner : Mr.L.Gavaskar

For Respondent : M/s.Jerry V.V. Sundar

O R D E R

This Revision is filed against the son, aggrieved by the order of the learned Judge, ordering a sum of Rs.10,000/- as maintenance to the respondent namely, Syed Abdul Rahim, his father.

2. The grievance of the petitioner is that firstly, the respondent is earning and is able to maintain himself. Secondly, his further contention is that the petitioner is already maintaining the mother. Apart from the petitioner, there are three other sons. Therefore, without claiming any maintenance from the other persons, the respondent has picked and chosen him only on account of the property dispute, in which, already the Court has held that the respondent did not have any right and the petitioner's mother alone has got a right. It is his further contention that he is only in the business of repairing sofas and especially, in view of the pandemic, he is getting less of such work and hence earning Rs.10,000/- per month and the contention that he is getting rental income is factually incorrect. The learned Counsel would rely upon the judgment in Vasant Vs. Govindrao Upasrao Naik and Ors.,¹ in support of his contention that when there are more than one children, picking and choosing one child alone is to be

¹ MANU/MH/0167/2016



interfered with.

3. Per contra, the learned Counsel for the respondent would submit that even as per the evidence on record, at this old age, the respondent is trying his best to do Watchman work and is earning a sum of Rs.7,200/-, even as per the evidence before the Trial Court, which is not enough to maintain himself. The other three children are not doing very well and they are Auto Driver and Tailors and are finding it difficult to lead their livelihood by themselves and therefore, since the petitioner is in possession of properties, the petition for maintenance is filed against this petitioner. The learned Counsel would rely upon the judgment of the Bombay High Court in Mahendra Kumar Vs. Gulabbai and Ors.,², in support of his contention that when there are more than one children, picking and choosing any child is within the right of the respondent.

4. I have considered the rival submissions made on either side and perused the material records of the case. Firstly, regarding the capacity to maintain himself, admittedly, as per the evidence on record, the respondent is earning sum of Rs.7,200/-. He is aged 88 years as on today and was aged 84 years as on the date of the petition. Considering the present day circumstances, one can easily conclude that any person to live at this age for minimum shelter, food, expenses and medical expenses, a sum of Rs.15,000/- to Rs.20,000/- is essential. Therefore, he is earning only a sum of Rs.7,200/- which is not enough to sustain himself. Therefore, I reject the arguments of the learned Counsel for the petitioner that the respondent is able to sustain himself and that he is not entitled for maintenance.

5. Now, coming to the second argument that there are other children and the counter arguments that the respondent is entitled to choose the petitioner for seeking maintenance, a perusal of the cross-examination shows that no categorical answer is given by the respondent and he has evaded the cross-examination by saying that he does not know what job is being performed by his other sons. Therefore, considering the facts and circumstances of this case, even though the respondent has a right to ask maintenance from one child alone, the facts that the petitioner is already maintaining his mother i.e., the wife of the respondent and that there are three other children, have to be taken into account and accordingly, I feel that it is just and fair that a sum of Rs.3,000/- per month is ordered as maintenance from the date of petition, instead of mulcting the entire liability of Rs.10,000/- from the petitioner alone.

6. Accordingly, the Criminal Revision Case is ordered on the



following terms:-

(i) the order, dated 03.02.2021 in M.C.No.353 of 2018 passed by the learned V Additional Principal Judge, Family Court, Chennai is modified as to the quantum of maintenance alone and instead of Rs.10,000/- per month, from the date of petition a sum of Rs.3,000/- is ordered to be payable by the petitioner;

(ii) the respondent would be at liberty to file fresh application for maintenance against the other children also;

(iii) the petitioner shall pay the monthly maintenance of Rs.3,000/- on or before the fifth day of every English Calender month and pay the arrears from the date of petition till date within a period of eight weeks from today.

(iv) Consequently, Cr1.M.P.No.5389 of 2021 is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

grs

To

The V Additional Principal Judge,
Family Court, Chennai.

+1cc to M/s.Jerry V.V. Sundar, Advocate, S.R.No.36329

Cr1.R.C.No.249 of 2021

SV(CO)
CT/30/06/2022