



WEB COPY



Crl.R.C.No.726 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.726 of 2020

and

Crl.M.P.No.5213 of 2020

Vijayakumar

... Petitioner

Versus

1.Mathazhagi

2.Minor Dhanusha

Rep.by mother Mathazhagi

3.Minor Prashith Kumar

Rep.by the natural guardian mother

Mathazhagi

... Respondents

Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order dated 08.05.2020 as far as the respondent No.1 is concerned, passed by the learned Family Court, Karaikal in M.C.No.19 of 2019.

For Petitioner : Mr.B.Shruthan

For Respondents : Ms.M.Abbiraami

ORDER

The Criminal Revision Case is preferred against the order dated 08.05.2020 passed in M.C.No.19 of 2019 by the learned Judge, Family Court, Karaikal.



2. The petitioner is the husband, the first respondent is his wife and the respondents 2 and 3 are the minor children of the petitioner and the first respondent.

3. The respondents herein filed a maintenance case in M.C.No.19 of 2019 before the Family Court, Karaikal. The Family Court, after appreciating the entire materials ordered a sum of Rs.7,000/- to the first respondent herein/wife and dismissed the case as against the respondents 2 and 3 herein, since the petitioner himself looking after the minor children and bearing all the expenses including their educational expenses and other expenses, which was not challenged by the respondents herein. Aggrieved by the said order, the petitioner has filed the present revision before this Court.

4. The learned counsel for the petitioner submitted that the petitioner is taking care of his two children and the first respondent/wife is also living in the same house with the petitioner and all the basic necessities, which are required to smoothly run the family, are provided by the petitioner and all the expenses are bore by the petitioner. He further submitted that as the first respondent/wife is doing milk vending business and earning a sum of



Rs.6,000/- per month, she can maintain herself. The Family Court without appreciating the above facts, ordered a sum of Rs.7,000/- per month as maintenance to the first respondent/wife.

5. When the matter was taken up for hearing on 01.09.2020, the petitioner was directed to pay 50% of the monthly maintenance amount viz., Rs.3,500/- from the month of September, 2020 onwards to the first respondent/wife.

6. The learned counsel for the respondents submitted that even though both the parties are residing under the same roof and the petitioner is providing food and shelter to the first respondent, the first respondent has to meet out her incidental expenses like medical expenses and other expenses. Thus, the Family Court has rightly ordered maintenance to the first respondent.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents and also perused the materials available on record.



8. Admittedly, the relationship between the parties and paternity of the child are not in dispute. The main allegation raised by the first respondent is that the petitioner is having illegal intimacy with others, for which, he is spending money lavishly and therefore, the respondent is not willing to reside with the petitioner. Considering the future of the children and the reputation of the family, she is only living in the same house with the petitioner.

9. The learned counsel for the petitioner vehemently contended that the first respondent herself is earning more than a sum of Rs.6,000/- per month from the milk vending business, but, it is not a perennial source of income, since the cows will not give milk in the same ratio in 365 days. Therefore, fixing the monthly income of the first respondent at Rs.6,000/- is not a correct proposition. Further, the petitioner himself admitted that earlier he was doing real estate business and now he is doing fishing agent business and earning sufficient income and leading a decent life in the society. In order to maintain the status of the petitioner, the petitioner is liable to pay the maintenance amount to the first respondent. The first respondent in her evidence admitted that she has been earning a sum of Rs.6,000/- per month



by doing milk vending business, but the said amount is not sufficient to meet out her basic necessities.

10. It seems that the Family Court has ordered a sum of Rs.7,000/- per month as maintenance to the first respondent, but, the reasons given by the Family Court for awarding the said amount is not correct. Since the petitioner meet out the expenses for the basic necessities such as food and shelter and other expenses for the first respondent, the first respondent has to meet out only the incidental expenses viz., medical, clothing and other expenses.

11. Considering the facts and circumstances, this Court finds that the first respondent is entitled to get Rs.5,000/- per month as maintenance from the petitioner.

12. In view of the above, this Criminal Revision Case is partly allowed and the maintenance amount awarded by the Family Court i.e. Rs.7,000/- per month is modified to Rs.5,000/- per month as maintenance to the first respondent from the date of filing this petition and the same shall be



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deposited directly to the 1st respondent's Bank account on or before 5th day of every English Calendar month. Consequently, connected miscellaneous petition is closed.

15.12.2022

Index : Yes/No
Speaking Order/Non Speaking Order
ms

To

The Judge,
Family Court,
Karaikal.



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P.VELMURUGAN, J.

ms

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