



WEB COPY

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED: 08.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.571 of 2021
and
Crl.M.P.No.9475 of 2021

P.Senthilkumar ...Petitioner/Respondent

versus

1.S.Devi

2.Minor S.Jayavel

Rep by his mother and natural guardian
the 1st petitioner

...Respondent/Petitioners

Prayer: Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the order dated 19.03.2021 made in M.P.No.858 of 2019 in M.C.No.115 of 2013 on the file of IV Additional Family Court, Chennai by allowing this revision.

For Petitioner : Mr.S.Sivakumar

For Respondents: Mr.J.D.Srikanth Varma

O R D E R

This Criminal Revision Petition has been filed seeking to set aside the order dated 19.03.2021 made in M.P.No.858 of 2019 in M.C.No.115 of 2013 on the file of IV Additional Family Court, Chennai.

2.The petitioner herein is the respondent in M.C.No.115 of 2013 on the file of IV Additional Family Court, Chennai.

3.The case of the respondents is that the petitioner married the first respondent on 20.08.2004 at Sri Mookambika Thirumana Maligai, Chennai as per the Hindu customs and rites. Out of the wedlock, the first respondent gave birth to the second respondent on 18.03.2012, later, due to the dispute arose between the petitioner and the first respondent, she left the matrimonial home and resided with her parents. Later, in the year, 2013, she filed a maintenance petition in M.C.No.115 of 2013 and the same is pending before the IV Additional Family



Court, Chennai, meanwhile, she filed a petition for interim maintenance in M.P.No.858 of 2019 on the file of IV Additional Family Court, Chennai. The learned IV Additional Principal Judge, Family Court, Chennai by order dated 19.03.2021, awarded a sum of Rs.5,000/- as interim maintenance to each respondent.

4.Challenging the said order, the petitioner, who is the husband of the first respondent is before this Court, as the interim maintenance application has been filed belatedly without any reasons.

5.Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the records.

6.Learned counsel for the petitioner/husband submitted that after giving birth to the second respondent, the first respondent, abandoned the petitioner and left the matrimonial home without any reasons and therefore, it would not be necessary for the petitioner to pay interim maintenance. Further, it is his contention that after filing a petition under Section 125 Cr.P.C. in the year 2013, she filed the interim maintenance petition only in the year 2019, that shows that the first respondent is having sufficient means for maintain herself as well as the second respondent. Accordingly, he prays to set aside the order dated 19.03.2021.

7.Per contra, the learned counsel appearing for the respondents would submit that after giving birth to the second respondent, the petitioner/husband voluntarily deserted his wife and refused to pay maintenance. The efforts taken by the parents of the first respondent are all ended in vain. In the said circumstances, the petitioner/husband filed a petition under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights in H.M.O.P.No.559 of 2013. Though the first respondent filed a counter affidavit as she is ready to rejoin with the petitioner, in this connection, the reason stated by the petitioner that the first respondent voluntarily left the matrimonial home, is false and only in order to avoid his duties in paying maintenance he is before this Court with this revision petition.

8.The submissions made by the learned counsel appearing on either side are considered.

9.The letter submitted by the IV Additional Principal Judge, Family Court, Chennai would reveal the fact that the maintenance case filed by the first respondent is posted for examination of respondent's side evidence therein. In other words, in respect of paternity and also in respect of the validity of the



marriage, there was no denial on the side of the petitioner. So being the husband of the first respondent, further, the father of the second respondent, the petitioner is having the duty to maintain them. Though the interim maintenance application has been filed after a long gap, that is not a ground for disbelieve the case of the first respondent. The particulars submitted by IV Additional Principal Judge, Family Court, Chennai shows that the petitioner is attempted to prolong the disposal of the maintenance case pending against him. Moreover, the learned counsel appearing for the petitioner fairly admitted that after instituting the maintenance case in the year, 2013, till now the petitioner has not paid any amount towards the maintenance. Apart from that, he has not stated about the details of income derived by the first respondent.

10.It is settled law that the husband has to maintain his wife by paying maintenance under Section 125 Cr.P.C. Further, the reason stated by the petitioner for setting aside the impugned order is not having any valid ground and therefore, I am of the considered view that the present petition is not having any merits for setting aside the impugned order dated 19.03.2021.

11.Accordingly, the Criminal Revision Case is dismissed. However, the learned IV Additional Principal Judge, Family Court, Chennai is directed to dispose of the case in M.C.No.115 of 2013 within a period of three months from the date of receipt of a copy of this order. Consequently, Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

rsi

To

The IV Additional Principal Judge,
Family Court, Chennai.

+2cc to Mr.J.D.Srikanth Varma, Advocate, S.R.No.21961

Cr1.R.C.No.571 of 2021
and

Cr1.M.P.No.9475 of 2021

SSD(CO)
RGA(04/04/2022)