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Crl.RC.No.1118 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.1118 of 2021 &
Crl.M.P.No.14317 of 2021

S.Senthilkumar

... Petitioner

Vs.

Vijayabanu

... Respondent

Prayer: Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to set aside the order dated 17.09.2021 made in C.M.P.No.29 of 2020, in M.C.No.62 of 2017, on the file of the Family Court, Erode by allowing this Criminal Revision Petition.

For Petitioner : Mr.C.Ramaraj

For Respondents : Mr.C.Munusamy

ORDER

The Criminal Revision Petition has been filed by the husband against the order of the trial Court granting maintenance. The petitioner is the husband and the respondent is the wife.



2. According to the Petitioner/Husband, the marriage between the Couples took place on 30.11.2012 at Varatharajarperumal Kovil at Pollachi. After the marriage they lived together as joint family for some time and thereafter, the joint family life was not convenient to the respondent/wife, the Petitioner/Husband took her to a separate house, but due to her behaviour with the neighbours, on 18.02.2014, a complaint was lodged by the house owner against the respondent/Wife and insisted them to vacate the house and moreover, respondent/Wife was harassing the petitioner/Husband and restricted the visit of his relatives to the house. After six months, the respondent/Wife insisted her Husband to give consent for divorce of the matrimonial journey and on 01.10.2016, without any intimation or reason, the respondent/Wife left the matrimonial house and never returned back. Thereafter, the petitioner/Husband filed H.M.O.P.No.148 of 2016, before the Subordinate Court, Pollachi, for restitution of conjugal rights and the same was withdrawn as the Wife filed a petition in M.C.No.62 of 2017 under Section 125 Cr.P.C., seeking maintenance before the Family Court, Erode, against the petitioner/husband. Subsequently, the Wife filed petition in F.C.O.P.No.426 of 2017 for restitution of conjugal rights before the Family



Court, Erode and the same is pending. Pending M.C., in the year 2020, the respondent/Wife filed a petition in C.M.P.No.29 of 2020 for interim maintenance till the disposal of the main maintenance case. The Family Court, after enquiry, ordered a sum of Rs.12,000/- as interim maintenance till the disposal of the main M.C.No.62 of 2017 from the date of filing of the petition. Aggrieved over the said order, the present Criminal Revision Petition has been filed by the petitioner/husband.

3. The learned counsel appearing for the Petitioner/Husband would submit that he sent a notice to the respondent/Wife and the respondent/Wife expressed her willingness for reunion with him and the same was clarified with the learned counsel appearing for the respondent/Wife and the learned counsel for the respondent/wife submitted that when the respondent/wife went to the house of the petitioner/husband, no one was there. Further, the learned counsel for the petitioner/husband would submit that the respondent/wife insisted to live in a separate house, and in this regard this Court is not expressing any opinion as to whether it is possible or not and they have to work out this issue among them.

4. Heard the learned counsel for the parties and perused the materials



on record.

5. The learned counsel appearing for the petitioner/husband seeks adjournment. This Court is not inclined to keep this Revision Petition pending further, since the Maintenance case is pending from the year 2017 and perusing the grounds raised in the revision by the petitioner/husband, it is seen that the maintenance case filed under Section 125 Cr.P.C., itself is summary in nature and the respondent/wife is dragging on the proceedings, but however, a perusal of the entire materials it is admitted facts that the marriage between them happened and now they are living separately and also the respondent/wife filed the maintenance case and the same is pending from the year 2017 to till date and the same is not in dispute.

6. Section 125(1) Cr.P.C., provides that if a person having sufficient means neglects or refuses to maintain his wife who is unable to maintain herself, or his legitimate or illegitimate minor child, whether married or unmarried who unable to maintain themselves, or his legitimate or illegitimate child even though attain majority, where such child is, by reason of any physical or mental upnormality or injury unable to maintain herself, or his father or mother, who are unable to maintain himself or herself on proof of



such neglect or refusal liable to pay maintenance. The object of the maintenance proceedings is compelling those who can provide support to those who are unable to support themselves and who have a moral claim to be supported. Under the law the burden is placed in the first place upon the claimants to prove that a person from whom claiming maintenance is having sufficient means and that claimants are unable to maintain themselves.

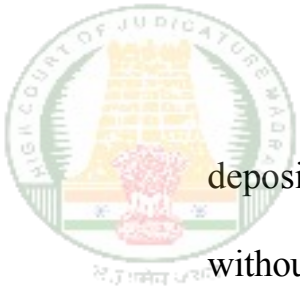
7. Normally in a revision, the Court will not interfere with the order of the Courts below, unless there is any perversity in the appreciation of evidence or any illegality or infirmity is found in the order of the Courts below. In this case, the relationship of the parties are not in dispute. The respondent/Wife is residing separately and the same is also not in dispute. Though the Petitioner/Husband is a Government employee working in the Tamil Nadu Water Supply and Drainage Board as a Technical Assistant-Fitter, Mahalingapuram, Pollachi and he has sufficient means and the Family Court determined the petitioner/husband's salary even as per the salary slip as Rs.52,992/- per month and after deduction his take home salary is Rs.43,132/- per month. Further, it is also proved by the respondent/Wife that she is living in her parental house and she is unable to maintain herself. Since



as per Section 125 Cr.P.C., if the wife is unable to maintain herself and the husband despite sufficient source, neglects to maintain his wife, then she is entitled to get the maintenance. Therefore, the respondent/wife has proved that she has no means to maintain herself as she is unemployed, and hence, the Family Court considered the facts and circumstances of the case and has rightly awarded the claim for maintenance for the Wife in a sum of Rs.12,000/- as interim maintenance, which is a reasonable one.

8. Therefore, this Court does not find any perversity in the order passed by the Family Court and the Revision Petition filed by the Petitioner/Husband is dismissed by confirming the interim maintenance sought for by the respondent/Wife.

9. The Petitioner/Husband is directed to deposit the entire arrears of amount from the date of filing of the petition to till date before the learned Family Court, Erode within a period of one month from the date of receipt of a copy of this order, failing which, the Family Court is directed to take stringent action and execute the order in letter and spirit. Further, the Family Court is directed to communicate this order to the Wife and soon after the



deposit is made by the Petitioner/Husband, the amount shall be disbursed without insisting on any formal application.

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10. Further, the Family Court is directed to dispose of the main Maintenance Case itself within a period of three months from today and no extension of time would be entertained, since the proceedings under Section 125 Cr.P.C., is summary in nature and already 5 years have lapsed.

In the result, the Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is dismissed.

26.10.2022

Index :Yes/No
Internet:Yes/No
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Note:- The Registrar General is directed to call for explanation from the Judge, Family Court, Erode, who are all the Presiding Officers from 2017, to till today as to why the petition under Section 125 Cr.P.C., is pending for more than five years and why the Judge have not applied their mind in the petition filed under Section 125 Cr.P.C., which is a summary in nature.

Note: Issue order copy on 01.11.2022



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P.VELMURUGAN,J.
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To

The Family Court, Erode

Criminal Revision Case No.1011 of 2021

26.10.2022

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