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Crl.R.C.No.1347 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.04.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1347 of 2024
and
Crl.M.P.Nos.11495 and 14341 of 2024

G.Ramesh, S/o Govindaraj

.. Petitioner

Vs.

1. Elavarasi, D/o Venkatachalam

2. Minor Nisha, D/o Ramesh

(Minor respondent 2 is represented by
next friend/guardian, the 1st respondent)

.. Respondents

Criminal Revision Case filed under Section 397(1) read with Section 401 of Cr.P.C. against the order dated 08.03.2024 passed in M.C.No.50 of 2023 on the file of the Family Court, Krishnagiri.

For petitioner : Mr.K.Gandhikumar

For respondents: Mr.M.Suresh

ORDER

The revision petitioner is the husband and the first respondent is the wife and the second respondent is their daughter.

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2. The first respondent, along with the minor daughter, filed a maintenance case in M.C.No.50 of 2023 before the Family Court, Krishnagiri. After enquiry, the Family Court ordered maintenance of Rs.3,500/- per month to the first respondent and Rs.6,000/- per month to the second respondent. Aggrieved by the grant of said maintenance, the revision petitioner (husband) has preferred this revision petition.

3. Learned counsel for the revision petitioner submitted that the first respondent/wife is not entitled to get maintenance, since she is leading an adulterous life and she is disqualified from getting maintenance under Section 125(4) of Cr.P.C. The trial Court failed to consider the same.

4. Though the learned counsel for the petitioner produced photographs to show that the first respondent-wife is having illegal relationship with a person and she filed a petition for divorce and the competent Court had dismissed O.P.No.35 of 2023. Even though both the cases were heard together, separate judgment was rendered in both these cases. The petitioner-husband has challenged the rejection order passed by the Family Court.

5. It is the further submission of the learned counsel for the revision petitioner/husband that since the first respondent/wife had left the matrimonial

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home voluntarily and also stated to be leading adulterous life, she is not entitled for the maintenance. Unfortunately, the Family Court failed to consider the crux of the petition and ordered maintenance, which warrants interference by this Court.

6. Learned counsel appearing for the respondents (wife and minor child) submitted that the petitioner has not proved the adultery and though the wife had filed the divorce petition in OP.No.35 of 2023, the same was dismissed by the Family Court, against which, an appeal is stated to be pending before the Division Bench of this Court. Unless the competent Court declares that the revision petitioner/husband is entitled for divorce on the ground of adultery, there is no disqualification for getting maintenance. In this case, the revision petitioner failed to prove the allegation of adultery, which is the subject matter of appeal which is stated to be pending before the Division Bench of this Court. As on date, the revision petitioner/husband has not established the disqualification of the first respondent/wife from getting maintenance from the revision petitioner/husband. The Family Court rightly considered the entire materials on record and also partly allowed M.C.No.50 of 2023 ordering maintenance.

7. Heard both sides and perused the materials available on record.

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8. The marital status of the parties is not disputed. The paternity of the child is also not in dispute. It is also not in dispute that both are living separately. The only dispute is that, according to the first respondent/wife, she is not having any means to maintain herself, and that the revision petitioner is still in service and working in the Defence Department and getting Rs.70,000/- per month as salary and he is a man of means. The revision petitioner/husband has not established that the first respondent/wife is having independent source of income to maintain herself and also the minor child.

9. In the above facts and circumstances, considering the economical status of the revision petitioner/husband and that the Court also had directed payment of maintenance amount, though the revision petitioner alleged adultery on the wife, however, he had made an attempt before the Family Court by filing petition for divorce in O.P.No.35 of 2023 and after full-fledged trial, the said petition for divorce, was dismissed, however, the same is under challenge before the Division Bench in appeal (CMA), in which, no conclusion has yet been arrived at. Hence, according to the learned counsel for the revision petitioner/husband, as on date, there is no decree from the competent Civil Court and the respondents are disqualified from getting maintenance.

10. Therefore, considering the facts and circumstances of the case and

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the relationship between the parties being also not in dispute and since the first respondent/wife is able to prove that she is not having means to maintain herself and she had also proved that the revision petitioner is having monthly income from his sources of income from salary and the revision petitioner/husband is liable and duty bound to maintain the respondents herein (wife and minor child). The revision petitioner/husband has not challenged the order granting maintenance by the Family Court, and he is only challenging the maintenance amount granted to the respondents (wife and minor child) on the ground of disqualification, namely adultery. As stated above, so far, no competent Civil Court has declared and granted decree of divorce on the ground of adultery.

11. Further, the scope and object of Section 125 Cr.P.C. is very limited, which is a summary procedure and when once the wife has established that she has no means to maintain herself and the minor child, this Court is of the view that the first respondent/wife, with the second respondent/minor child, is entitled for maintenance.

12. There being no merits in this revision petition, the same is accordingly dismissed. The miscellaneous petitions are closed. However, the revision petitioner/husband is at liberty to file appropriate application and seek necessary relief, in case he succeeds in the pending appeal before the Division Bench of

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this Court as against the order of dismissal of petition for divorce by the Court
below.

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To

1. Judge, Family Court, Krishnagiri.
2. The Section Officer, Criminal Section - Records Wing, High Court, Madras.

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P.VELMURUGAN, J

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