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Court : Chennai

Decided On : Nov-15-2016

Judge : The Honourable Dr. Justice P. Devadass

Appeal No. : Crl.R.C.No. 1007 of 2011

Appellant : Karthik

Respondent : Josephine and Another

Judgement :

(Prayer: This Criminal revision is filed under Section 397 r/w 401 of Cr.P.C., against the order, dated 26.5.2011 in M.C.No.48 of 2008 on the file of the Chief Judicial Magistrate, Vellore.)

1. This revision is by an husband against his wife and daughter as against grant of maintenance to them by the learned Chief Judicial Magistrate, Vellore in M.C.No.48 of 2008.

2. The revision petitioner fell in love with the first respondent. They have become love birds. They exceeded their limit. She became pregnant. There were discussion about their affair. By the time, she was 9 months pregnant.

3. In this backdrop of the matter, on 21.1.2009, at Apostolic Faith Mission, Karasamangalam, Vellore both have married. Subsequently, the second respondent was born. Thereafter, difference of opinion arose between the

spouses. They started living separately. The child was with her mother. The first respondent filed M.C.No.48 of 2008 seeking maintenance for herself and for her daughter in the Court of Chief judicial Magistrate, Vellore.

4. In his counter affidavit, the revision petitioner admitted his marriage with the first respondent and also the birth of the child. However, he alleged that she did not discharge her duty as a wife to him, she did not care for the child, she is working as a Lab Assistant and earns Rs.7500/- per month.

5. In the trial Court, the revision petitioner has admitted that he was earning Rs.20,000/- per month. This was in the year 2011 itself.

6. Considering the evidence, the learned Chief Judicial Magistrate directed the revision petitioner to pay Rs.5000/- and Rs.2500/- per month to his wife and daughter respectively from the date of filing of the maintenance petition.

7. Aggrieved, the husband has directed this revision.

8. The main ground of attack of the revision petitioner is that the trial Court has not properly considered the evidence. It has also been contended that his wife is very much interested in extracting money from the revision petitioner. The trial Court also failed to consider the fact that she is earning Rs.7500/- per month as Lab Assistant.

9. On the other hand, the learned counsel for the respondents would contend that absolutely there is no evidence to establish that the first respondent is employed as a Lab Assistant and earning Rs.7500/-. The situation in the matrimonial home was such that she could not live there. In the circumstances, she came back to her mother's house. It was established that the revision petitioner was earning Rs.20,000/- per month. In the circumstances, the learned Chief Judicial Magistrate has rightly directed the revision petitioner to pay them maintenance.

10. I have anxiously considered the rival submissions, perused the impugned order and the entire materials on record.

11. The revision petitioner is the husband of the first respondent and the father of the second respondent. Thus, he is bound to maintain them. It is alleged that inspite of having means, he has failed to maintain them. The respondents have sought for maintenance under Sec.125 Cr.P.C.

12. A woman can claim maintenance on the ground that she was deserted by her husband and she has no means to maintain herself. So, financial capacity of the wife is also to be considered. But merely because she is earning, an husband cannot refuse to maintain his wife. It is not that in order to claim maintenance, the wife must come to the Court with hungry mouth. Sometimes to make the pot to boil in her house, she may work as a servant maid. In such circumstances, the husband cannot refuse to pay her maintenance. What the Court has to see is whether the wife has sufficient financial capacity to maintain herself. Therefore, her minimum earnings to maintain herself cannot be a ground to deny her maintenance.

13. In this case, except the allegation that the first respondent is employed as a Lab Assistant on a monthly salary of Rs.7500/- no acceptable evidence has been produced by the revision petitioner.

14. The allegation of the revision petitioner that his wife had not discharged her duty as a dutyfull wife is very vague and bereft of details and materials. What kind of duties he expected from her and how she had failed to discharge those duties were not been demonstrated in evidence. Therefore, in the circumstances, the trial Court has rightly ordered him to pay maintenance to his wife and daughter.

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