

Madras High Court

A.Anandaraj vs K.Geetha on 4 August, 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.08.2009

CORAM:

THE HONOURABLE MR.JUSTICE G.RAJASURIA

CrL.R.C.No.544 of 2007

and

M.P.No.1 of 2007

A.Anandaraj

... Petitioner

vs.

1. K.Geetha

2. Viswa Wilson

... Respondents

(Minor rep. By
guardian mother K.Geetha)

Prayer: Petition filed under Section 397 and 401 of Cr.P.C. against the judgment dated

For Petitioner : No appearance

For Respondents : No appearance

O R D E R

Animadverting upon the order dated 29.11.2004, passed by the Family Court, Coimbatore, in M.C.No.84 of 2003, this revision is focussed.

2. A 'resume' of facts which are absolutely necessary and germane for the disposal of this revision would run thus:

(a) The respondents herein filed M.C.No.84 of 2003 before the Family Court under Section 125 of Cr.P.C. seeking maintenance.

(b) Inasmuch as the revision petitioner contested the claim, whereupon enquiry was conducted. During enquiry, the first respondent herein examined herself as P.W.1 along with P.W.2, Dinakaran. and Exs.P1 to P3 were marked. On the side of the revision petitioner, he examined himself as D.W.1 along with D.W.2, Charles Mohan.

(c) Ultimately the Family Court awarded maintenance directing the revision petitioner herein to pay a sum of Rs.1,000/- per month in favour of each of the respondents.

3. Animadverting upon such awarding of maintenance, this revision has been focussed on various grounds, the gist and kernel of them would run thus:

The lower Court failed to take into consideration the fact that the revision petitioner lost his job with effect from 08.11.2002 and in such a case, he would not be able to pay maintenance. The lower Court also failed to take into consideration the revision petitioner's readiness to live with his wife and child. Accordingly, he prayed for setting aside the order of the Family Court.

4. Despite printing the names concerned, none appeared.

5. The point for consideration is as to whether there is any perversity or non-application of law in awarding maintenance.

6. The relationship among the parties is an admitted one. The husband and wife would blame each other for the rift in the matrimonial relationship. However, the mere fact that the husband's readiness to live with the wife would speak volumes that the wife is not having any blame worthy conduct on her part. Even if there is real matrimonial dispute between them, at the instance of either of them, they have to get it settled before the matrimonial Court. It is a trite proposition of law that under Section 125 Cr.P.C. only summary proceedings are contemplated and that the inability on the part of the wife and the child to maintain themselves should be considered along with the neglect on the part of the revision petitioner in not providing maintenance to them. Here there is nothing to indicate that the respondents are having any financial wherewithal to make both ends meet; to keep the pot boiling and to keep the wolf from the door.

7. However, so far as the husband is concerned, admittedly he was working as a Security Official anterior to 08.11.2002 and he lost his job. In this connection, I would like to recollect the trite proposition of law that a male cannot plead that he is jobless. He has to see that he is straining every nerve and earning and providing maintenance to his wife and child who are unable to maintain themselves.

8. Regarding the child is concerned, it is beyond doubt that the revision petitioner should maintain him, whether the child is with the revision petitioner or with the first respondent. However, regarding R1 is concerned, she is reeling under penurious and impecunious circumstances and she has no financial wherewithal to maintain herself. Hence in such a case, the husband has to maintain his wife also. The very fact that G.RAJASURIA,J., gms the revision petitioner was working as a Security Official in a private concern bespeaks that he could pay a sum of Rs.1,000/- per month in favour of each of the respondents, which position cannot be found fault with. Awarding maintenance in a sum of Rs.1,000/- per month would connote and denote that it comes to only Rs.30/- per day. Accordingly if worked out, it comes to Rs.900/- per month. Towards medical expenses, travel expenses and unforeseen expenses, each of them would require atleast a sum of Rs.100/- per month and as such, awarding Rs.1,000/- per month in favour of each of the petitioners warrants no interference. It is also a fact that the respondents are entitled to live in commensurate with the status of the petitioner and in such a case, I could see no merit in this revision petition and hence it is dismissed. Consequently, connected miscellaneous petition is closed.

Gms

04.08.2009

Index : Yes/No

Internet : Yes/No

To

1. The Family Court, Coimbatore.
2. The Public Prosecutor, Madras.

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