

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders Reserved on :14.06.2016)

DATED: 01.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.693 of 2016

and

Crl.M.P.Nos.4966 and 4967 of 2016

Rakesh Kumar

... Petitioner

Vs.

Asha (alias) Abha

... Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of the Code of Criminal Procedure, to call for the records in C.A.No.277 of 2014 on the file of the learned XVII Additional Sessions Judge, at Chennai and set aside the dismissal order dated 01.04.2016 confirming the order passed by the learned II Metropolitan Magistrate, Egmore, Chennai, in Crl.M.P.No.1766 of 2014 in C.C.No.6948 of 2014, dated 13.10.2014 and allow the revision.

For Petitioner : Mr.Praveen Alexander

For Respondent : Mr.R.Shankar

ORDER

This Criminal Revision Case is preferred by the petitioner to call for the records in C.A.No.277 of 2014 on the file of the learned XVII Additional Sessions Judge, City Civil Court, Chennai and set aside the dismissal order dated 01.04.2016 confirming the order passed by the learned II Metropolitan Magistrate, Egmore, Chennai, in Crl.M.P.No.1766 of 2014 in C.C.No.6948 of 2014, dated 13.10.2014 and allow the revision.

2. The learned counsel appearing for the petitioner would mainly contend that the respondent/wife is earning an annual income of Rs.2,79,110/- and she is an income tax assessee, as per her IT returns filed during the year 2014-2015 and therefore, she is not entitled for maintenance. The learned

Appellate Judge failed to consider the fact that as per the income tax return filed during the above said period, the respondent/wife is not entitled to any maintenance at all. It is further contended that the learned Appellate Judge failed to consider the fact that the revision petitioner had filed a petition in H.M.O.P.No.448 of 2014 on the file of the learned III Additional Family Judge, Chennai, as early as on 07.02.2014 and subsequently, on 20.03.2014, the respondent, as a counter blast, has filed a petition for restitution of conjugal rights in O.P.No.1087 of 2014 followed by the complaint under the Domestic Violence Act. It is further contended that the revision petitioner is complying with the direction to pay a sum of Rs.5,000/- per month to the respondent which was ordered on 12.01.2015 by the learned XVII Additional Judge, City Civil Court, Chennai, in the stay application in Crl.M.P.No.17274 of 2014 in Crl.A.No.277 of 2014 and during the period of stay, the petitioner is not in default in paying the maintenance amount of Rs.5,000/- per month to the respondent till date. The above said facts were not appreciated by the trial Court. The trial Court, without considering the pendency of the divorce petition filed by the petitioner and also the petition filed by the respondent for restitution of conjugal rights and the complaint filed under the Domestic Violence Act, awarded interim maintenance and the same is not sustainable in law and hence, the criminal revision case has to be dismissed.

3. In this case, it is admitted by both parties that the present petitioner had filed a petition in H.M.O.P.No.448 of 2014 on the file of the learned III Additional Family Judge, Chennai, on 07.02.2014 and subsequently on 20.03.2014, the respondent, as a counter blast, has filed a petition for restitution of conjugal rights in O.P.No.1087 of 2014 followed by the complaint under the Domestic Violence Act and the same are pending. Further, it is not disputed on the side of the respondent that at the time of granting stay, the revision petitioner was directed to pay Rs.5,000/- per month towards interim maintenance and the petitioner has paid the said amount regularly to the respondent. In this case, the learned counsel for the petitioner would mainly contend that the respondent was earning annual income of Rs.2,79,110/- and the said fact is proved as per her IT returns filed during the year 2014-2015.

4. On the other hand, the learned counsel for the respondent would contend that the above certificate produced on the side of the petitioner is false one and the revision petitioner himself is an income tax assessee and he filed returns for the assessment year 2014-2015 wherein his gross turnover receipt is Rs.8,97,523/- and income is Rs.2,92,152/-.

5. In view of the above facts and circumstances of the case, the respondent is earning annual income of Rs.2,79,110/-. In this case, during the pendency of the stay application, the revision petitioner is regularly paying a sum of Rs.5,000/- per month to the respondent and also continuing to pay the said amount. In view of the above facts and circumstances of the case, this Court is of the considered view that the revision petitioner has to be directed to pay cash of Rs.5,000/- per month to the respondent till the disposal of C.C.No.6948 of 2014.

6. In the result, this Criminal Revision Case is allowed in part and the order of the trial Court is modified as follows:-

The revision petitioner is directed to pay a sum of Rs.5,000/- per month to the respondent towards interim maintenance. The trial Court is directed to dispose of the case in C.C.No.6948 of 2014, within a period of one month from the date of receipt of a copy of this order, according to law. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Jr1

To

1. The XVII Additional Sessions Judge,
Chennai.
2. The II Metropolitan Magistrate,
Egmore, Chennai.

+1 CC to Mr. Praveen Alexander, Advocate, Sr.No.49567

Pre-Delivery Order in
Crl.R.C.No.693 of 2016

BVR (CO)
MD : 15/09/2016