IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2018

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1350 of 2017
and
Crl.M.P.No.13141 of 2017

J.Ragunathan ... Petitioner/Respondent

Vs.

1.Aruna
2.Kanishka ... Respondents/Petitioner

Prayer: Criminal Revision Case filed under Sections 397 & 401 of the Criminal Procedure Code seeking to set aside the order dated 19.08.2017 in M.C.No.252 of 2015 on the file of the Principal Family Court, Chennai, against the petitioner herein.

For Petitioner : M/s.Rita Chandrasekaran for M/s.G.Muthu

For Respondents : Mr.B.Sundar

O R D E R

This criminal revision has been filed against the interim maintenance awarded by the lower Court wherein the respondent/ wife and her minor daughter filed petition under Section 125 of Cr.P.C. before the lower Court claiming maintenance of Rs.10,000/- p.m. each to the respondents and the lower Court directed the petitioner herein to pay a sum of Rs.4,000/- each to the respondents herein as interim maintenance.

2.The facts of the case are as follows:

The marriage between the petitioner and the first respondent was solemnized on 04.07.2008 and out of the wedlock, a female child was born to them on 20.07.2009. When the first respondent was three months pregnant, the petitioner and his family members sent her to her parental home by promising her to visit every week. Thereafter, the petitioner has failed to take care of the respondents. Since the first respondent found it difficult to take care of herself and her child, she filed the

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petition under Section 125 of Cr.P.C. before the lower Court. The lower Court after considering the issue elaborately, awarded a sum of Rs.4,000/- each as interim maintenance to the respondents.

3.The learned counsel for the petitioner would submit that the first respondent never behaved as a dutiful wife with the petitioner and she always ill-treated the petitioner by calling him for panchayat and insulted him before her relatives. Since the first respondent failed to perform her basic duties as wife, though the petitioner is ready to spend huge money for delivery, on her own accord, she left the matrimonial home, for which, the petitioner filed OP No.1394 of 2012 for restitution of conjugal rights and the same was dismissed for default on 26.02.2014. In order to harass the petitioner, the respondents filed a maintenance case under Section 125 of Cr.P.C.

4.On perusal of the records, it is seen that earlier the lower Court awarded a sum of Rs.3,000/- each p.m. as interim maintenance to the respondents. As against the said order, the petitioner herein has filed a revision case in Crl.R.C.No.413 of 2017 and this Court, on 05.04.2017, directed the petitioner to pay maintenance of Rs.3,000/- each to the respondents till the disposal of the maintenance case without any default. Thereafter, the main case in M.C.No.252 of 2015 was taken on file. After elaborate discussion, the lower Court awarded a sum of Rs.4,000/- each [totally Rs.8,000/-] to the respondents.

5.The learned counsel for the respondents would submit that the respondents did not dispute the relationship between the petitioner and the respondents. After the marriage, the petitioner had not taken care of the first respondent and left her in the parental home at the stage of three months pregnancy and the delivery was taken care by her parents. In order to develop the rights of the petitioner, he has filed OP No.1394 of 2012 for restitution of conjugal rights and the same was dismissed for default on 26.02.2014. The petitioner filed another O.P.No.2626 of 2014 seeking for divorce on the ground of cruelty and desertion and the same was dismissed for default. Since the petitioner fails to take care of the respondents, they filed M.C.No.252 of 2015 before the Court below. Though the Court below awarded Rs.3,000/- each to the respondents towards interim maintenance, the petitioner preferred the revision before this Court to reduce the maintenance amount of Rs.3,000/- each as awarded by the Court below. Thereafter, the Court below taken the main case and after consideration of the submissions of both sides, the Court below awarded a sum of Rs.4,000/- each [totally Rs.8,000/- p.m.] to the respondents as maintenance, which is a reasonable one.

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6.The learned counsel for the petitioner would submit that the petitioner and his mother are depending upon the pension of his father, who is a retired employee and that the petitioner is not in a position to pay such huge amount of Rs.8,000/- to the respondents. However, in pursuance of the direction passed by this Court in Crl.R.C.No.413 of 2017, dated 05.04.2017, the petitioner has paid upto 09.08.2018 [to the extent of 29 months out of 31 months] and he did not commit any default on payment of the interim maintenance. He would further submit that the lower Court has awarded a sum of Rs.8,000/- which is an exorbitant one and therefore, he prays to interfere with the order of the Court below and allow the revision.

7.The learned counsel for the respondent would submit that though initially the lower Court awarded interim maintenance of Rs.3,000/- each, the said amount was paid only upto March, 2018 and thereafter, the amount was not paid.

8.The learned counsel appearing for the petitioner would further submit that as per Section 125 (4) of Cr.P.C., no wife shall be entitled to receive an allowance from her husband, if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent. Accordingly, he prayed for allowing the revision.

9.Though the learned counsel appearing for the petitioner relied upon Section 125 (4) of Cr.P.C., he did not produce any material before this Court to establish as to why the petitioner is refusing to pay interim maintenance to the first respondent as ordered by the lower Court. In the absence of any material to establish the valid reason for refusal of interim maintenance to the first respondent and unless the petitioner satisfies this Court as to why he is refusing to pay the interim maintenance, this Court cannot interfere with the order of the lower Court in a mechanical manner.

10.Further, considering the present cost of living, the quantum of interim maintenance fixed by the lower Court, in the opinion of this Court, is not onerous or inappropriate. It is just and reasonable. Hence, I do not find any error in the order passed by the lower Court.

11.In view of all the above, I am not inclined to interfere with the order passed by the lower Court. Accordingly, this criminal revision is dismissed, however, the learned counsel for the petitioner is directed to deposit the entire maintenance amount at the rate of Rs.8,000/- p.m. [Rs.4,000/- each] from the date of petition viz., 05.06.2015 and continue to pay Rs.4,000/- each per month to the respondents on or before 7th of every

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English Calendar Month. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Audit)

//True copy//

Sub Assistant Registrar

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To

1.The Principal Judge, Family Court, Chennai,

+2cc to Mr.G.Muthu, Advocate SR.No.66200

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GMY(17/10/2018)

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