

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.717 of 2018

V.Suresh Babu

... Petitioner/Respondent

Vs

Hemalatha

... Respondent/Petitioner

Prayer: This Criminal Revision Petition has been filed, under Section 397 read with 401 of Cr.PC, to set aside the order dated 03.04.2018, made in M.P.No.2900/2017 in D.V.C.No.437/2017, on the file of the learned Additional Mahila Court, Egmore at Allikulam, Chennai and to dismiss the same.

For Petitioner : Mr.N.Suresh

For Respondent : Mr.S.Shujath

ORDER

- 1.This Criminal Revision Petition has been filed by the petitioner/husband, against the common order dated 03.04.2018, made in Crl.M.P.Nos.2900 and 2901/2017 in D.V.C.No.437/2017, directing the petitioner/husband to pay an amount of Rs.2,000/- each per month to his wife and child towards the interim maintenance to be paid on or before 10th day of every English Calendar Month from the date of order till the disposal of that case.
- 2.For the sake of convenience, the parties are here to referred to as husband and wife.
- 3.The wife had filed D.V.C.No.437/2017, on the file of the Learned Additional Mahila Court, Egmore, Allikulam at Chennai, claiming various reliefs under Sections 18, 19 and 20 of the Protection of Woman from Domestic Violence Act, 2005. During the pendency of D.V.C.No.437/2017, the wife had filed M.P.No.2900/2017, seeking for a direction to the husband, to pay a sum of Rs.22,500/- towards maintenance for her and her son towards food, Clothes and son's educational expenses on interim basis, under Section 20 of the Protection of Woman from Domestic Violence Act, 2005.

4. The petitioner/husband had filed a counter stating that he did not have any income to pay the money to his wife and son and that the wife had lodged a complaint against him before the W-34, All Woman Police Station, Chennai and the complaint was taken for enquiry in C.S.R.No. 233/2015 and during the enquiry, the respondent/wife had given a letter, stating that she is not interested in the living with her husband and that she is going to live separately along with the child at her parents house and thereby, the husband contended that the wife is not entitled to maintenance as per Section 125 (4) of Cr.P.C.
5. The Trial Court, finding that it has only limited scope to analyse the facts with available records in the interim application and finding that it need not delve deep in to the merits of the case at this stage had allowed the petition for interim maintenance and directed the husband to pay a sum of Rs.2,000/- each to the wife and his child viz., Sanjeeth as interim maintenance, on or before 10th of every English Calendar Month. As against the order of grant of interim maintenance, the present revision has been filed.
6. The learned counsel for the petitioner/husband would 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. The respondent wife having given a letter that she does not want to live with the petitioner and that she is going to live separately, along with her child at her parents house, she is not entitled to maintenance.
7. Per Contra, the learned counsel for the Respondent/wife would submit that though, Section 125(4) of Cr.P.C., says about non entitlement of the wife to receive maintenance if she refuses to live with her husband, it can be only applicable, in the event, if the wife refuses to live with her husband, without any sufficient cause. In this case, the refusal of the wife to live with her husband is due to the cruel acts of the husband committed on her forcing to give a complaint against the husband before the All Woman Police Station, Ennore and that during the enquiry, she had given such a letter. Whether the refusal of the wife to live with her husband is with or without sufficient cause can be decided only after letting in evidence during trial. He would further submit that the present petition has been filed only seeking for interim maintenance and though the wife had claimed an amount of Rs.22,500/- towards interim maintenance, the Trial Court has only awarded a meagre amount of Rs.2,500/-. He would further submit that the Trial Court seeing plight of the wife and child had ordered only for interim maintenance. The Hon'ble Apex Court and this Court have

on several occasions held that interim maintenance is only to prevent destitution and vagrancy. The Trial Court, finding that whether the refusal of the respondent/wife to live with her husband is with or without sufficient cause can be decided only during the trial by letting in evidence and finding that the wife and child are living any destitution, has ordered for grant of interim maintenance. Interim maintenance is awarded only as a temporary measure to support the child and wife, during the pendency of the petition for maintenance and there is no error in the order passed by the Trial Court. Further, the Hon'ble Apex Court, has held that speedy disposal of the application for maintenance is essential and that belated disposal cannot be justified and he would pray for dismissal of the revision petition.

8.This Court heard the submissions made by the learned counsel on both sides and perused the impugned orders and materials placed on record.

9.The Trial Court, finding that the respondent/wife is living with her child without any sufficient income and without any maintenance from her husband had granted interim maintenance. Further, the Court had held that at the time of grant of interim maintenance, it has got only limited scope to analyse the facts based on available record and that it would not go in to the merits of the case. Further, finding that the marriage between the parties are admitted and the birth of the child was also not disputed and finding that the wife and child have no source of income or means, based on the admission of the petitioner/husband had awarded an amount of Rs.2,000/- each to the wife and child. Further, it is seen that the main D.V.C.No.437/2017, is pending from the year 2017 and the petition for interim maintenance had been filed on 23.10.2017 and the order of interim maintenance has been passed on 03.04.2018. The Hon'ble Apex Court in ShamimaFarooqui v Shahid Khan reported in (2015) 5 SCC 705, has held that speedy disposal of the application for maintenance is essential and belated disposal without grant of interim maintenance cannot be justified. The Trial Court has further held that in case of delay caused by dilatory tactics adopted by parties, the Court should endeavor to curtail such designed procrastination of proceedings by passing suitable orders. As stated above, the reason for the refusal of the wife to live with the husband is with or without sufficient cause can be decided only by letting in evidence during trial. Till such time, the wife and child cannot be left without any interim maintenance being awarded to them.

10.In this case, though the wife had claimed a sum of Rs.22,500/- per month for interim maintenance for her and her

child, the Trial Court has awarded Rs.2,000/- per month, which in the opinion of this Court is nominal and would meets the ends of justice.

11.I do not find any error or infirmity in the order passed by the Trial Court.

12.In view of the above, the Criminal Revision Petition stands dismissed. The petitioner/husband shall pay the arrears of maintenance within a period of four weeks from the date of receipt of a copy of this order. The Trial Court shall take steps to dispose of the main D.V.C.No.437/2017, as expeditiously as possible.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To:

1. The Additional Mahila Court, Egmore at Allikulam, Chennai.
2. The Public Prosecutor, High Court, Madras

+1 CC to Mr.S.Shujath Advocate sr 87104
+1 Cc to Mr.N.Suresh, Advocate sr 87267.

Cr1.R.C.No.717 of 2018

PVS (CO)
SP(06/02/2020)

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