

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1324 of 2017 and
Crl.M.P.Nos.12854 of 2017

T. Mani ...Petitioner/Respondent
-Vs-

Sulochana ...Respondent/Petitioner

Criminal Revision Petition filed under Section 397 read with Section 401 of Cr.P.C. to call for the records in connection with M.C.No.18 of 2008 dated 15.07.2017 on the file of 3rd Additional Family Court, Chennai.

For Petitioner : Mr. M. Rajendran
For Respondent : Mr.P. Vijendran

O R D E R

This criminal revision has been filed against the order dated 15.07.2017 passed in M.C.No.18 of 2008 directing the petitioner/husband to pay maintenance at the rate of Rs.3,500/- p.m to the respondent/wife.

2. The Revision petitioner is the husband and the respondent is the wife. The husband filed divorce petition in H.M.O.P.No.3431 of 2007 before the I Additional Principal Judge, Family Court, Chennai and during the pendency of the same wife filed I.A.No.1091 of 2010 in O.P.No.3431 of 2007 seeking interim maintenance and the learned Judge by order dated 14.08.2010 directed the husband to pay Rs.2,000/- per month from the date of petition viz., 25.08.2008.

3. Despite obtaining such order of maintenance, the respondent/wife, suppressing the said fact, continued to pursue the M.C.No.18 of 2008 filed by her, wherein the III Principal Judge by order dated 15.07.2017, awarded Rs.3,500/- per month as maintenance and the said amount was directed to be paid on or before 5th of every English Calendar month vide order dated 15.07.2017.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. It is seen that the revision petitioner filed the petition for divorce and when the same is pending before the family Court, the respondent herein/wife filed M.C.No. 18 of 2008. It is needless to say that the proceedings Under Section 125 of Cr.P.C is only an interim relief till the competent Court passes order in appropriate proceedings.

6. When the petition for divorce is pending for more than 3 years and the respondent/wife has already filed Interlocutory Application Under Section 24 of the Hindu Marriage Act and the same was allowed on 14.08.2010 directing the husband to pay Rs.2,000/- per month as interim maintenance, it is not known as to how the III Additional Family Court has granted further direction to pay Rs.3,500/- per month in a petition filed under section 125 of the Cr.P.C, which shows that the learned Judge has not understood the scope of Section 125 of Cr.P.C

7. Once the maintenance petition is pending before the competent Court, that Court on being satisfied that, there is a prima facie ground for making such order, may direct the person against whom the application for maintenance has been made, to pay a reasonable amount by way of interim maintenance to the applicant, pending the final disposal of the maintenance application. In the case on hand, the respondent/wife has already been granted maintenance @ Rs.2,000/- p.m. However, subsequently by the order impugned, the petitioner was directed to pay Rs.3,500/- without considering the earlier order. The Court below while passing the order impugned has not considered the earlier order in I.A.No.1091 of 2010, this Court is unable to accept the reasoning adopted by the Court below in awarding Rs.3,500/- p.m. Accordingly, the said order dated 15.07.2017 is set aside. However, the respondent is at liberty to file a petition for modification of the order passed in of I.A.No.1091 of 2010.

8. With the above observations, the criminal revision is allowed. Consequently, connected miscellaneous petition are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The III Principal Judge,
3rd Additional Family Court,
Chennai.

+1 cc to M/s.M.Rajendiran, Advocate Sr.No. 38765
+2 cc to M/s.P.Vijendran, Advocate Sr.No. 39288 & 40132

AKM/16.12.19/3P-5C /

CrI.R.C.No.1324 of 2017 and
CrI.M.P.No.12854 of 2017 and
CrI.M.P.No.692 of 2019