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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.11.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.No.1087 of 2019
and
Crl.M.P.No.14728 of 2019

A.Manohar

... Petitioner

Vs.

1. Geetha Lakshmi

2. M.Mithun

[Second respondent is represented
by his mother and natural guardian
the first respondent]

... Respondents

PRAYER:

This Criminal Revision Petition has been filed, under Sections 397 r/w 401 of Cr.P.C. to revise and set aside the order of the V Additional Principal Judge, Chennai passed in M.P.No.300 of 2019 in M.C.No.59 of 2019 dated 24.07.2019.

For Petitioner : Mr.K.Venkateswaran

For Respondents: Mr.C.Prakasam

ORDER

1. This Revision petition has been filed against the order dated 24.07.2019 passed in M.P.No.300 of 2019 in M.C.No.59 of 2019 on the file of the V Additional Principal Judge, V Additional Family Court, Chennai.

2.The Revision petitioner is the husband.

3.For the sake of convenience, the parties are referred to as husband and wife.

4. Brief facts of the case are that the respondent/wife has filed M.C.No.59 of 2019 claiming maintenance of Rs.25,000/- per



month for her and Rs.15,000/- per month for the second petitioner her minor son, totally claiming Rs.40,000/- per month from the revision petitioner/husband. During the pendancy of the maintenance petition, the wife had filed M.P.No.300 of 2019 claiming interim maintenance and the litigation expenses of Rs.20,000/-.

5.The averments in the petition is that the marriage between the parties took place on 07.05.1999 at Vairamani Mahal Thirumana Mandapam, S.R.P.Koil Street, Agaram, Chennai - 600 082 as per the Hindu rites and customs and after the marriage, they started their marital life in the husband's house. Out of the wedlock, two male children were born. The first son Rahul was born on 21.09.2000 and the second son Mithun, the second respondent herein was born on 14.10.2009.

6. The wife had suffered sexual torture day by day. The husband's father settled the property worth about more than two crores vide registered settlement deed dated 04.11.2012 in Document No.18 of 2012 bearing Plot No.3, Middle street, Sri Nagar, Kolathur, Chennai -99 in favour of the husband.

7. It had been contended by the wife that for the development of the property, she had given the entire jewels and her brother had also given money to the husband. Totally 8 residential portions and one shop were constructed in the above property. They retained one residential portion and 7 other residential portions and 1 shop were let out to the tenants and they are getting a sum of Rs.75,000/- per month as rental income. Furthermore, the husband attacked the wife by using Puri wood on the head. She was admitted in Shepherd Nursing Home, Peravallur, Chennai. Based on complaint given by her, F.I.R has been registered against the husband in Crime No.610 of 2018 for the offences under sections 341, 294(b), 307 and 506(2) of IPC and then the wife took treatment as inpatient in the hospital from 01.10.2018 to 13.10.2018.

8.The wife further contended that the first son Rahul was studying in the Engineering college and the younger son, the second respondent herein was studying in IV standard and promoted to V Standard in Everin Vidyasaram, CBSE school, for which the wife is paying yearly fees of Rs.60,750/-. Since the wife is unemployed and suffering a lot and being unable to maintain herself and that the husband, a qualified Diploma Holder in Mechanical Engineering employed as a Quality Controller in a MNC Company, is leading a comfortable life and enjoying with the salary of Rs.1.50 lakhs and rental income of Rs.75,000/- per month and he had not taken the least care and humanitarian approach to look after and maintain and provide basic comforts of life to his wife and children.



9.The husband has filed a counter wherein he had denied that his brother-in-law had given the money for the construction of the building. Further it had been contended that the wife was leading an adulterous life and not entitled for maintenance. Further, it was contended that the wife was in the incorrigible habit of being with the male counter parts right from the inception of the marriage and in the absence of the husband, the wife had resorted to immoral activities in actively participating in the pornographic hardcore WWW.x.video.com and due to her immoral acts, the husband had to leave a decent and lucrative job at China and lost all his future and everything. The husband was presently jobless and sought for the dismissal of the petition.

10.The wife had filed the rejoinder and she had denied all the allegations, stating that the allegation of adultery is only an after thought and even the name of the person who is stated to have had illegal intimacy with the wife was not mentioned in the counter. The husband had admitted the paternity of the children in the divorce petitions and also in the counter filed in the main maintenance case and only to evade the payment of interim maintenance, the husband has made false allegations, as if the wife was having illegal contacts.

11. The trial court after perusing the affidavit and petition filed on either sides and after perusing the records, passed an order directing the husband to pay a sum of Rs.10,000/- per month to the wife and Rs.5000/- per month to the second son towards interim maintenance from the date of the petition ie., from 27.03.2019. Against which the present Revision Petition has been filed by the husband.

12. Learned counsel for the revision petitioner / husband would vehemently contend that as per section 125(4)Crpc, no wife shall be entitled to receive the amount for the maintenance or the interim maintenance from her husband if she is living in adultery. He would submit that the husband has categorically proved by Exs.R1 and R2 that the wife was leading an immoral life. Without taking into consideration Exs.R1 and R2, the trial court had erred in passing the order. He would further submit that the paternity of the second respondent, minor son is not disputed by the husband and he is prepared to pay the interim maintenance award amount in full to the minor son and would seek to set aside the order in part in respect of interim maintenance to the first respondent / wife.

13. Per contra, Mr.C.Prakasam, the learned counsel appearing for the respondent/wife would vehemently contend stating that since the husband had neglected to take care of the wife and child,



she had filed the main M.C. No. 59 of 2019 seeking maintenance at the rate of Rs. 25,000/- per month for herself and Rs. 15,000/- for her son. In the main case she had filed petition for interim maintenance and the trial Court had directed the husband to pay Rs. 10,000/- for the wife and Rs. 5,000/- for the minor son. He would submit that Exs.R1 and R2 have been fabricated only for the purpose of this case and that they have not been proved by letting in legal evidence. Exs.R1 and R2 have been fabricated only as an after thought to evade from paying maintenance to wife and the child. He would submit that the provisions of Chapter IX Cr.P.C should be liberally construed as the primary object so as to give social justice to women and children and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves. These provisions provide for a speedy remedy to those who are in distress and they are intended to achieve this social purpose and since the wife was unable to maintain herself and her children, the trial court had awarded interim maintenance.

15. At this juncture, learned counsel appearing for the petitioner husband would reiterate that the petitioner husband is prepared to get along with the trial of the case on day today basis and that he also undertakes to pay the maintenance in respect of the second respondent herein minor son in full and he is also prepared to pay the entire arrears in respect of the second respondent son. He would further submit that the wife is not entitled to maintenance much less interim maintenance also.

16. I gone through the materials placed on record. This is a revision petition filed against the order of grant of interim maintenance. Interim maintenance is awarded so as to prevent destitution and vagrancy. Admittedly the petitioner is stated to be getting an income of Rs.75,000/- per month and the respondent is unemployed and not able to maintain herself and accordingly the trial court has passed an order granting Rs.10,000/- to the first respondent/wife and Rs.5000/- to the second respondent/minor son. Counsel for the revision petitioner husband has agreed that he is prepared to pay Rs.5000/- awarded to the second respondent minor son in full.

17. Based on the above submissions made, this Court is partly allowing the Revision petition. The interim maintenance of Rs.10,000/- awarded to the wife alone is modified as Rs.5000/- per month. The maintenance awarded to the 2nd respondent/minor son is confirmed. The revision petitioner shall pay the arrears within two weeks from the date of receipt of the copy of the order. The trial court shall take every endeavor to complete the trial in M.C.No.59 of 2019 within a period of three months from the date of receipt of a copy of this order.



Consequently, connected miscellaneous petition is closed. However, it is made clear that the above observations made in this order are only for the purpose of deciding this criminal revision case alone and such observations shall not either way prejudice to the rights of either parties and that the trial court shall not be influenced by any of the observations made in this order, but shall proceed with the trial independently and in accordance with law.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

mfa

To:

The V Additional Principal Judge,
V Additional Family Court,
Chennai.

+1cc to Mr.K.Venkateswaran, Advocate SR.No.98284

+1cc to Mr.C.Prakasam, Advocate SR.No.98105

+1cc to Mr.K.Balaji, Advocate SR.No.97858

CRL.R.C.No.1087 of 2019
and
Crl.M.P.No.14728 of 2019

RP (CO)
GMY (21/01/2020)