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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.1114 of 2019

Jagan Soosai @ Jagan.S, ... Petitioner/Respondent

Vs.

1.Christina Rafya

2.Minor Nicole Jessica

3.Noelle Fait ... Respondents/Petitioners

[2nd and 3rd respondents are represented
by the mother & Natural guardian,
Mrs.Christina Rafya, 1st respondent]

PRAYER: The Criminal Revision Petition has been filed, under Section 397 read with 401 Cr.P.C to call for the entire records and set aside the interim maintenance order, dated 22.07.2019 in respect of M.P.No.930 of 2018 in M.C.No.47 of 2014 on the file of the learned Vth Additional Principal Family Judge, Chennai.

For Petitioner : Mr.M.Jaikumar

For Respondents : Mr.S.Saravanel

J U D G M E N T

The revision petition has been filed seeking to set aside the order passed in M.P.No.930 of 2018 in M.C.No.47 of 2014, dated 22.07.2019 by the V Additional Family Court, Chennai, directing the petitioner to pay a sum of Rs.10,000/- to the first respondent and Rs.5,000/- each to the second and third respondent as interim maintenance and directing the amount to be paid before fifth day of every English calender months.

2 The brief facts of the case are as follows:

(a) The first respondent herein/wife had filed M.C.No.47 of 2014 and had claimed an amount of Rs.40,000/- for her and Rs.20,000/- each for her two children viz., second and third respondents, towards maintenance from the petitioner herein/



husband. During the pendency of the petition, the first respondent/wife had filed M.P.No.930 of 2018 seeking for payment of interim maintenance before the Trial Court. The first respondent/wife had contended that she is residing with her father along with her two children and that she having no sufficient independent source of income and that the revision petitioner/husband having sufficient source of income to maintain him as well as respondents herein, had claimed an amount of Rs.10,000/- each to her and her children. She had contended that the revision petitioner/husband had not been taking care and maintaining her and her two children.

(b) The revision petitioner/husband had filed a counter before the Trial Court, stating that his monthly salary while he was working at USA was Rs.1,00,000/- and in that amount, half of the amount will be spent for house rent, day to day expenses. He had further stated that he had come back to Chennai from USA , during August, 2015 and working in the same company HCL at Chennai and his salary is nearly Rs.45,000/- only. It had been further contended that he is living in the rented home and paying a rent of Rs.25,000/- and after spending for other expenses, he is having only a meager amount and had further stated that the first respondent/wife is well educated women and that she had refused to live with the petitioner herein/husband and that he had suffered financial loss due to the first respondent/wife. Further, it had been stated that the respondent/wife was always engrossed with her mobile phone and used to say to the petitioner that mobile phone was her first husband and without mobile phone, she cannot live and that she ill-treated petitioner herein and her in-laws and was very rude to them. Further, it had been stated that the first respondent/wife was employed and she is having independent source of income.

(c) The Trial Court finding is that the first respondent/wife and her children are living separately and her claim was only towards interim maintenance, taking into consideration the materials filed, it had granted interim maintenance as stated above. As against which, the present revision has been filed by the husband.

3 The learned counsel for the petitioner/husband would submit that the respondent/wife is presently working as a Team leader at Accenture Software Company and that she has got independent source of income and it is not a case that she is not able to maintain herself and that the Trial Court without taking into consideration that she is gainfully employed, has passed an order granting interim maintenance.



4 Per contra, the learned counsel appearing for the first respondent/wife would submit that order has been passed by the Trial Court, granting only interim maintenance, pending disposal of the main case. He would submit that in the main application, the first respondent/wife claimed an amount of Rs.40,000/- for her and Rs.20,000/- each to her children and that the Trial Court finding is that the petitioner/husband has not maintained wife and his children from the year 2014 and had passed an order for interim maintenance. He would submit that the petitioner/husband has been protracting the proceedings before the Trial Court by one way or the other.

5 The learned counsel for the first respondent would further submit that earlier the petitioner/husband had filed C.M.A.No.2886 of 2017 before this Court to set aside the ex-parte order of granting divorce in I.D.O.P.No.362 of 2014 which prayer was dismissed by the trial court vide Petition filed by the husband in I.A.No.1699 of 2015. A Division Bench of this Court, on 23.03.2018, had set aside the ex-parte order and remitted back the matter to the Trial Court, with a direction to complete the trial. Now, the trial is going on. Earlier the petitioner did not contest the M.C.No.47 of 2014, which was pending from 2014 and that he was set ex-parte during August 2015. Thereafter, he filed petition for setting aside the said ex-parte order and delayed without numbering it and thereafter, the petition to set aside the ex-parte order in the main M.C.No.47 of 2014 was allowed without any condition. Thereafter the petitioner was set ex-parte in M.P.No. 930 of 2018 seeking for interim maintenance and he also filed a petition to set aside the ex-parte order passed in M.P.No.930 of 2018 and the petition to set aside the ex-parte order was dismissed by the Trial Court. The petitioner had filed CrI.R.C.344 of 2019 against the ex-parte order dated 21.02.2019 passed in M.P.No.930 of 2018 in M.C.No.47 of 2014 and this Court by order dated 22.04.2019, in CrI.R.C.No.344 of 2019, confirmed the order dated 21.02.2019, however, directed the Trial Court to take up the petitions in M.P.Nos.171 and 172 of 2019 on the same day and thereby he would contend that the intention of the petitioner is only to avoid payment one way or other.

6 This Court is able to see that main M.C.No. 47 of 2014 is pending from the year 2014 and the order for interim maintenance has been passed only on 22.07.2019. The Trial Court had relied on the judgment of this Court, reported in 1988 CrL.J. 3708 (3715) Madras - [Mani Vs.Jaykumari], wherein, this Court had held as under:-

"The provisions of Chapter IX Cr.P.C. should be liberally construed as the primary object is to give social Justice, to women and children and to prevent



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destitution and vagrancy by compelling those who can support those who are unable to support themselves. These provisions provide a speedy remedy to those who are in distress. They are intended to achieve this social purpose”.

7 In the judgment reported in 2015 (5) SCC 705 - [Shamima Farooqui vs. Shahid Khan], the Apex Court has held that speedy disposal of application for maintenance in essential and belated disposal without grant of interim maintenance is not justified.

8 The main M.C.No.47 of 2014 is pending for four years. In the opinion of this Court, the Trial Court has rightly allowed the petition granting interim maintenance to the respondent/wife and her two children. This Court does not find any infirmity in the order passed by the Trial Court. Orders for interim maintenance are passed to provide a remedy to wife and children, who are in distress. Thereby the revision stands dismissed.

9 It is made clear that the Trial court, while hearing the main M.C.No.47 of 2014, shall decide the said case on its own merits, uninfluenced by the observations made in this revision. However, the petitioner is directed to pay the arrears of interim maintenance within a period of two months from today, in two installments.

10 The Trial Court is directed to dispose M.C.No. 47 of 2014, within a period of four months from the date of receipt of a copy of this order and further, the petitioner shall continue to pay the interim maintenance till the disposal of the main case in M.C.No.47 of 2014.

11 With the above directions, the Criminal Revision Case stands disposed of.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

To

1.Vth Additional Principal Family Judge, Chennai.

2.The Public Prosecutor, High Court, Madras.

+ 1 cc to Saravanavel, Advocate Sr.91624 (02/12/2019)

Crl.R.C.No.1114 of 2019

(CO)

SSM(06/11/2019)