

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cr1.R.C.No.1478 of 2018 and
Cr1.M.P.No.17368 of 2018

P.Eswar Rao

...Petitioner

-Vs-

Mahalakshmi

...Respondent

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. to call for the records in respect of impugned order dated 05.03.2018 made in M.C.No.398 of 2011(originally on the file of the learned II Additional Judge, Family Court at Chennai) now on the file of the learned VI Additional Judge, Family Court, Chennai and set aside the same.

For Petitioner : Mr.G.Jayachandran
For Respondent : Ms.M.Vanitha for
M/s.Majestic Law Firm

O R D E R

This criminal revision case has been filed against the conditional order imposed by the Court below in the petition filed by the petitioner seeking condonation of delay in filing the petition to set aside the ex-parte order dated 26.04.2012 in M.C.No.398 of 2011 awarding maintenance at Rs.15,000/-.

2 The petitioner is husband and respondent is wife. The respondent wife has filed a petition under Section 125 of Cr.P.C seeking maintenance, the Court below had passed an ex-parte order dated 26.04.2012 directing the petitioner/husband to pay a sum of Rs.15,000/- towards maintenance to the respondent/wife. The petitioner had filed two miscellaneous petitions in M.P.No.536 and 537 of 2014, seeking to set aside the exparte order and to condone the delay of 830 days in filing petition to set aside the exparte order. The Court below, by a common order dated 05.03.2018, had allowed the petitions by imposing condition that the petitioner shall pay 50% of arrears of maintenance as awarded by the Court below by order dated 26.04.2012, against which, the petitioner is before this Court.

3 According to learned counsel for the petitioner, the respondent is a earning member by doing tailoring, whereas, the petitioner is getting only Rs.5,000/- after all the deductions. Further the order passed by the Court below awarding maintenance at Rs.15,000/- is only an exparte order. The Court below without considering the above facts, has imposed a condition, while allowing the petition to set aside the exparte order, and directed the petitioner to pay 50% of the arrears amount, which is liable to be set aside.

4 According to the learned counsel for the respondent, the respondent, being a lady, is doing some tailoring works for her livelihood and struggling to meet her day to day expenses. The Court below had awarded maintenance at Rs.15,000/-, but this amount was also not paid by the petitioner. Therefore, the Court below, had rightly imposed a condition to pay 50% of arrears amount.

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

6 It is seen an exparte order was passed in M.C.No.398 of 2011 directing the petitioner/husband to pay a sum of Rs.15,000/- towards maintenance to the respondent/wife. Thereafter, after the lapse of nearly two years, the petitioner filed a petition to set aside the exparte order, which was also allowed on condition that the petitioner shall pay 50% of arrears amount, against which, the petitioner has filed the present criminal revision. This Court is of the view that the proceedings under Section 125 of Cr.P.C seeking maintenance, itself is a summary in nature and the same is still agitating by the petitioner and the maintenance case was filed in the year 2011 and has not attained finality. Under these circumstances, this Court does not find any illegality or infirmity in the conditional order passed by the court below. Even though the petitioner contended that his take home salary is only Rs.5,000/-, but, on perusal of the records it reveal that the petitioner was earning a sum of Rs.20,000/- and made the respondent/wife to struggle for her basic needs. This Court does not find any merit in the present criminal revision case and the conditional order dated 05.03.2018 passed by the Court below is hereby confirmed, since it is only an interim arrangement and the petitioner can defend his case before the Court below in the maintenance case. The petitioner/husband is directed to pay arrears of maintenance as directed by the Court below on or before 22.04.2019 and as the time given by the Court below to deposit the amount has expired, the Court below is

directed to permit the petitioner to deposit the amount on or before 22.04.2019. On such deposit by the petitioner/husband, the Court below is further directed to dispose of the maintenance case afresh after hearing both the parties within a period of three months from such deposit of amount by the petitioner/husband.

7 With the above observations and directions, the criminal revision case is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

The VI Additional Judge, Family Court, Chennai.

+1cc to M/s.Majestic Law Firm , Advocate SR.No. 31929

+1cc to Mr.G.Jayachandran, Advocate SR.No. 32969

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A.SK(08/04/2019)



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