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BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 19.09.2019

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C. (MD) NO. 256 OF 2019
AND
CRL. M.P. (MD) NO. 3757 OF 2019

Mohamed Riswan .. Petitioner/Respondent

- Vs -

1. Sabana Asmi
2. Minor Rukshana
   (rep. through her mother 7
   natural Guardian Sabana Asmi) .. Respondents/Petitioner

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure against the order dated 27.12.2018 made in M.C. No.13 of 2017 on the file of the learned Judicial Magistrate No.III, Tirunelveli.

For Petitioner : Mr. T.R.Jeyapalam

For Respondents : No Appearance

ORDER

This revision petition is preferred against the order 27.12.2018 made in M.C. No.13 of 2017 on the file of the learned Judicial Magistrate No.III, Tirunelveli, whereby the petitioner was directed to pay monthly maintenance of Rs.4,000/- to the 1st respondent/wife and Rs.3,000/- to the 2nd respondent/minor daughter.

2. It is not in dispute that the marriage between the petitioner and the 1st respondent was solemnized on 9.5.16 and out of the said wedlock the 2nd respondent was born. However, matrimonial discord arose between the petitioner and the 1st respondent shortly after the marriage due to which the 1st respondent stayed away at her parental house. It is further averred that false complaint was levelled against the relatives of the petitioner which created strain between both the families leading to the issuance of legal notice calling upon the 1st respondent to come and stay with the petitioner, which was returned by the 1st respondent, thereby prompting the petitioner to file the

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suit for restitution of conjugal rights. Pursuant to the filing of the suit, the 1st respondent filed M.C. No.13 of 2017 claiming maintenance for herself and their minor daughter, viz., the 2nd respondent.

3. After contest, the suit was decreed as prayed for on 7.12.2018 and on 27.12.2018, the impugned order of maintenance was passed directing payment of monthly maintenance of Rs.4,000/= to the 1st respondent and Rs.3,000/= to the 2nd respondent. Aggrieved by the said order, the present revision petition has been preferred.

4. It is the contention of the learned counsel appearing for the petitioner that despite there being a decree passed in the suit for restitution of conjugal rights on merits, the 1st respondent has not come to live with the petitioner, but has merely sought maintenance, which is impermissible. It is submitted by the learned counsel for the petitioner that the impugned order has been passed, without considering the decree obtained by the petitioner in the suit and, therefore, the same requires interference.

5. It is further submitted by the petitioner that the petitioner is aggrieved only insofar as maintenance awarded to the 1st respondent is concerned and in fact, fairly conceded that the petitioner is even ready and willing to pay any enhanced maintenance amount, as may be ordered by this Court, to the 2nd respondent/minor daughter of the petitioner.

6. When the matter is taken up for hearing, there is no representation for the respondents. Initially, the matter was heard by this Court on 16.9.2019 and after hearing the learned counsel for the petitioner, orders were reserved. Even on that day, there was no representation for the respondents. Even today there is no representation for the respondents. Therefore, this Court proceeds to decide the case on merits in the absence of any representation for the respondents, as the continued absence of the respondents only shows that the respondents are not ready and willing to defend the matter.

7. It is evident from the records that the petitioner has obtained a decree in the suit, filed in O.S. No.43/2017 on the file of the Family Court, Madurai, and the said Court decreed the suit on 7.12.2018 granting restitution of conjugal rights, as sought for by the petitioner. However, pending the suit, M.C. No.13 of 2017 was filed by the respondents seeking maintenance, on which maintenance was ordered on 27.12.2018. The order passed for maintenance clearly reveals that the decree passed in the suit has not been taken into consideration while passing the order for maintenance. Further, it is evident from the materials available on record that even in the suit filed for restitution of conjugal rights, the respondents were

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set exparte, as they failed to defend the said suit and, thereafter, decree was passed on 7.12.2018. Inspite of the efforts taken by the husband/petitioner to live with his wife/1st respondent, the 1st respondent did not appear to have taken any efforts to live with the petitioner, but had deserted the petitioner and was living away on her own volition. Therefore, it is clear that the 1st respondent is not entitled to maintenance u/s 125 (4) of the Act. Therefore, this Court is of the considered view that the monthly maintenance at Rs.4,000/=, awarded to the 1st respondent is not sustainable.

8. Insofar as the maintenance awarded to the 2nd respondent, viz., the minor daughter of the petitioner is concerned, the petitioner has fairly stated that the petitioner is even acceptable to pay enhanced maintenance, as may be ordered by this Court. In the above circumstances, this Court is of the considered view that monthly maintenance at Rs.5,000/- per month to the 2nd respondent, would be a fair and justiciable maintenance.

9. Accordingly, this criminal revision case is ordered in the below terms by modifying the order passed by the Judicial Magistrate No.III, Tirunelveli, in M.C. No.13/2017 as under :-

> *"i) The monthly maintenance of Rs.4,000/- awarded to the 1st respondent is cancelled;*
>
> *ii) The monthly maintenance payable to the 2nd respondent is enhanced to Rs.5,000/- (Rupees Five Thousand only) from Rs.3,000/-*
>
> *iii) The enhanced monthly maintenance of Rs.5,000/- is payable from the date of filing of the present criminal revision case."*

Consequently, connected miscellaneous petition is closed. In the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

Sub Assistant Registrar(CS)

GLN

To

1) The Judicial Magistrate No.III, Tirunelveli.

+1CC TO MR.T.R.JEYAPALAM, Advocate Sr. No.87728

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