

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

CrI.R.C.No.480 of 2018

Carl Evgene D'Silva

...Petitioner

Vs

Tamilselvi

...Respondent

Prayer:- Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. praying to set aside the order passed by the Judicial Magistrate No.I, Pondicherry in Cr.M.P.No.1120 of 2018 in D.V.C.No.25 of 2017 dated 16.02.2018.

For Petitioner : Mr.S.Saravana Kumar

For Respondent : Mr.S.Thamizharasi

ORDER

The order dated 16.02.2018 passed by the learned Judicial Magistrate -I, Puducherry in Cr.M.P.No.1120 of 2018 in D.V.C.No.25 of 2017, fixing the interim maintenance at Rs.5,000/- per month in favour of the respondent/wife is under challenge in this Criminal Revision Case at the instance of the petitioner/ husband.

2.The petitioner married the respondent on 30.12.2015 and the same was registered before the competent authority at Pondicherry. Due to a matrimonial dispute, the petitioner filed O.S.No.09 of 2017 before the Family Court, Pondicherry and obtained a decree of divorce on 04.07.2017. The respondent filed a case before the Judicial Magistrate, Puducherry under the Domestic Violence Act 2005 in DVC.No.25 of 2017 claiming maintenance of Rs.25,000/- among other reliefs. Pending the same, she also filed a petition in Cr.M.P.No.1120 of 2018 seeking interim monthly maintenance at Rs.15,000/-. By order dated 16.02.2018, the Judicial Magistrate- I, Puducherry granted an exparte interim order against the petitioner herein, directing him to pay a sum of Rs.5,000/- per month towards interim monthly maintenance, from the date of filing the said

petition until further orders. Aggrieved against the same, the petitioner is before this Court with this Criminal Revision.

3. On 11.04.2018, this Court has granted an order of interim stay on condition that the petitioner shall pay a sum of Rs.2,500/- per month on or before 5th of every month from April 2018 to the respondent and the arrears as ordered by the Court below, be paid within a period of four weeks from the date of receipt of a copy of the order.

4. According to the learned counsel for the petitioner, the petitioner got divorce from the respondent by order dated 04.07.2017 passed by the Family Court, Pondicherry in O.S.No.9 of 2017, on the ground of cruelty; as on date, there is no relationship between the parties as husband and wife; and hence, the respondent is not entitled to get maintenance from the petitioner. The learned counsel further submitted that due to family circumstances and financial constraints, the petitioner is unable to pay the arrears of interim monthly maintenance in a lumpsum and hence, the petitioner may be permitted to pay the same in instalments.

5. On the other hand, the learned counsel for the respondent submitted that the Court below after examining the materials available on record, has rightly fixed the interim monthly maintenance at Rs.5,000/- payable by the petitioner to the respondent and hence, the same does not call for any interference by this Court. It is also submitted that the petitioner is liable to pay a sum of Rs.77,500/- being arrears of maintenance.

6. Heard the submissions made by the learned counsel on either side and perused the materials available on record.

7. It is seen that the marriage between the petitioner and the respondent is the second marriage and the same is also under dispute. The learned Court below, after going through the Domestic Information Report submitted by the Protection Officer, has come to the conclusion that domestic violence had taken place. In the absence of any document to prove the income of the petitioner, the Court below has tentatively taken the monthly income of the petitioner at Rs.15,000/- and awarded a sum of Rs.5,000/- as interim monthly maintenance to the respondent, which this Court is not inclined to interfere, as the petitioner is under a moral obligation, bound to maintain the respondent and he cannot wriggle out of the said responsibility by citing his financial incapacity.

8. At this juncture, it is submitted by the learned counsel on either side that the Court below may be directed to dispose

of DVC No.25 of 2017 within a time frame to be stipulated by this Court.

9. In such view of the matter and also taking note of the submissions made by the learned counsel on either side, this Court disposes of this Criminal Revision Case in the following terms:

(i) the petitioner is directed to pay the interim monthly maintenance at Rs.5,000/- as ordered by the Court below, to the respondent, on or before 5th of every succeeding English Calendar Month, commencing from the month of March 2020, till the disposal of the case in DVC No.25/2017.

(ii) the petitioner is also directed to pay the arrears of maintenance of Rs.77,500/- as claimed by the respondent, in three equal instalments i.e., first instalment on 05.03.2020, 2nd instalment on 05.04.2020 and 3rd instalment on 05.05.2020.

(iii) the Judicial Magistrate No.I, Puducherry, shall dispose of DVC.No.25 of 2017 on merits and in accordance with law, after affording due opportunities of hearing to both the parties, within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

msr

To

The Judicial Magistrate No.I, Pondicherry.

+1cc to M/s.S.Thamizharasi, Advocate, S.R.No.10216

+1cc to Mr.S.Saravana Kumar, Advocate, S.R.No.11312

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PPA(CO)
KKV/15/06/2020