

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.831 of 2019
and
Crl.MP.No.12222 of 2019

Selvaraj .. Petitioner

Vs

Maheshwari .. Respondent
(address amended as per the order
of this Court dated 27.09.2019 in
Crl.MP.No.13980 of 2019)

Prayer:- Criminal Revision Case filed under Section 397
read with 401 of Cr.P.C. praying to set aside the order
passed in Crl.M.P.No.1949 of 2019 in M.C.No.34 of 2015
dated 19.07.2019 on the file of the Chief Judicial
Magistrate Court at Perambalur.

For Petitioner : Mr.R.Jayaprakash

For Respondent : Mr.S.Giritharan

ORDER

The petitioner is the husband and the respondent is the wife. They got married on 08.12.2006. Due to a matrimonial dispute between the parties, both of them are living separately. The respondent filed a petition in M.C.No.34 of 2015 before the learned Chief Judicial Magistrate, Perambalur, seeking maintenance. The said maintenance case was ordered exparte on 01.10.2015, thereby, directing the petitioner to pay a sum of Rs.10,000/- as monthly maintenance to the respondent from the date of filing of the petition for maintenance, on or before 10th of every succeeding English calendar month. Aggrieved over the same, the petitioner filed a petition in Crl.M.P.No.1949 of 2019 praying to condone the delay of 1107 days in filing the petition to set aside the exparte order passed by the Court below. The said petition was dismissed by order dated 19.07.2019, against which, the petitioner has preferred this Criminal Revision Case.

2. The learned counsel for the petitioner has submitted that the Court below, without providing sufficient opportunity to the petitioner and without appreciating any materials as regards the avocation and income of the petitioner, has ordered the monthly maintenance to the respondent, which is arbitrary, illegal and in violation of the principles of natural justice. It is also stated that the petitioner did not aware of the maintenance proceedings and he came to know about the passing of the exparte order only on 09.01.2019, when the Tahsildar approached him regarding distress warrant and hence, the delay in filing the petition to set aside the exparte order is neither wilful nor wanton, however, the Court below dismissed the said petition. Stating so, the learned counsel sought to set aside the order impugned herein.

3. The learned counsel for the respondent has submitted that no interference is required in the order impugned herein, as the Court below has considered the materials available on record in a proper perspective.

4. Heard both sides and perused the materials placed before this Court.

5. On 28.08.2019, this Court, while ordering notice to the respondent, has granted an order of interim stay on condition that the petitioner shall deposit 50% of the arrears of maintenance amount from July 2015 to August 2015 and further deposit a sum of Rs.5,000/- as interim maintenance every month, from the month of September 2019 onwards, on or before 10th of every English calendar month, before the Court below. It is reported that the said interim order has not been complied with by the petitioner till date.

6. After a careful threadbare analysis of the materials available on record, the Court below found that the petitioner has not adduced any reason much less plausible reason for condoning the delay of 1107 days in filing the set aside the exparte order passed in the maintenance case and accordingly, dismissed the said petition, which this Court is not inclined to interfere, considering the facts and circumstances of the case.

7. Further, the object of the provisions of Section 125 Cr.P.C., is to provide for a social justice falling within the swim of Article 15(3) and 39 of the Constitution of India, which have been enacted to protect the weaker section of the society like women and children. It is in the form of secular safeguard irrespective of personal law of the parties. The object is to compel a man to perform moral obligations towards the society in respect of maintaining his wife, children

and old parents so that they may not face destitution and become the liability of the society or may be forced to adopt a life vagrancy, immorality and crime for their subsistence or go astray (vide: Begum Subanu @ Saira Banu v. A.M. Abdul Gafoor, AIR 1987 SC 1103). Such being the legal position, this Court is of the opinion that the petitioner is bound to pay the monthly maintenance to the respondent.

8. In such view of the matter, this Criminal Revision fails and is accordingly, dismissed. It is open to the respondent to recover the monthly maintenance including arrears, in the manner known to law. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Chief Judicial Magistrate Court,
Perambalur.

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.17729
+1cc to Mr.S.Giritharan, Advocate, S.R.No.18604

Crl.R.C.No.831 of 2019

RK(CO)
maya (27/05/2020)

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