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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Cr1.RC.No.1429 of 2017
and
Cr1.M.P.No.14100 of 2017

Nayeemullahkhan

... petitioner/Revision petitioner/
Respondent

-Vs-

Noorjahan

... Respondent/Respondent/
petitioner

Prayer: Criminal revision is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records and set aside the impugned order passed by the District Munsif cum Judicial Magistrate-I, Walajapet, Vellore District in MC.No.7 of 2016, dated 21.09.2017.

For petitioner : Mr.H.Mohamed Ghouse

For Respondent : No appearance

O R D E R

The Criminal Revision is filed to call for the records and set aside the impugned order passed by the District Munsif cum Judicial Magistrate-I, Walajapet, Vellore District in MC.No.7 of 2016, dated 21.09.2017.

2. The revision petitioner is the husband and the respondent is his wife. The marriage between the petitioner and the respondent had taken place on 09.02.2012. After the marriage, they lived together in the matrimonial home at Velacherry. Subsequently, due to the difference of opinion, they were living separately. Thereafter, the petitioner has filed a petition for restitution of the conjugal rights before the trial Court and the same was allowed in favour of the petitioner. But the respondent has not come forward to live with the petitioner. Hence, the respondent is not entitled to get maintenance from



the petitioner.

3. Thereafter, the respondent/wife has filed a petition under Section 125 of Criminal Procedure Code, claiming a sum of Rs.10,000/- as maintenance, before the learned Judicial Magistrate-I, Walajapet. The same was taken on file in M.C.No.7 of 2016, which was allowed and the petitioner was directed to pay a sum of Rs.3000/- per month as maintenance to the respondent/wife and to pay a sum of Rs.7,000/- towards litigation expenses to the respondent. As against the order passed by the learned Judicial Magistrate, the petitioner has filed the present Criminal Revision before this Court.

4. The learned counsel for the petitioner/husband submitted that the respondent has clearly established before the trial Court that the respondent is earning a sum of Rs.300/- per day by rolling Beedi and she is earning sufficient means and she is able to maintain herself. But, the petitioner is the differently abled person and he is receiving some amount from his father for his livelihood. The petitioner has filed a petition before the learned III Additional Principal Judge, Chennai for restitution of conjugal rights and the same was allowed. But the respondent is not come forward to join with her husband. Therefore, the respondent is not entitled to get maintenance from the petitioner. The Family Court has failed to consider all these facts, awarded a sum of Rs.3,000/- per month, which warrants interference of this Court.

5. Heard the learned counsel for the petitioner and perused the materials available on record. Despite notice served to the respondent, there is no representation on her behalf.

6. The marriage between the petitioner and the respondent is not in dispute and the relationship between them is also not in dispute. The initial burden is on the petitioner to prove that the respondent has got sufficient means and that he has neglected to pay her. Admittedly, the respondent is rolling Beedi, which is the seasonal work and she has no sufficient means to maintain her. The petitioner's father is retired IG and the petitioner's family is well off in finance and there is no dispute with reference to the means of the husband.

7. On perusal of the impugned order, it is clearly shows that the the respondent is working as coolie. Out of her wages, she is unable to maintain herself. As already stated, marriage between the parties and relationship between them are not in dispute. The learned counsel for the petitioner submitted that the petitioner is the differently abled person and he is not able to maintain his wife. Admittedly, the petitioner obtained a certificate for his disability, only after the maintenance case



filed. Therefore, this Court finds that despite he is having sufficient means, he has neglected to pay maintenance to the wife. Hence, the revision petitioner is liable to pay the maintenance to the respondents under Section 125 Cr.P.C. However, the trial Court directs the petitioner to pay a sum of Rs.3,000/- to the respondent towards maintenance is just and reasonable. There is no reason to interfere with the order passed by the learned Judicial Magistrate-I, Walajapet in M.C.No.7 of 2016, dated 21.09.2017.

8. With the above discussions, this criminal revision case is dismissed. The petitioner/husband is directed to continue to pay the monthly maintenance regularly without any default. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rli

To

The District Munsif cum Judicial Magistrate-I,
Walajapet, Vellore District

+lcc to Mr.H.Mohamed Ghouse, Advocate, S.R.No.41276

CrI.RC.No.1429 of 2017 and
CrI.M.P.No.14100 of 2017

(CO)
CT(29/09/2021)