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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

CORAM:

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NO.771 OF 2014

A.Balachandran

... Petitioner

Versus

Thangamani @ Apsara

... Respondent

PRAYER:-

Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the order passed by the learned Judicial Magistrate, Udhagamandalam in C.M.P.No.5855 of 2014 in M.C.No.17 of 2014 and set aside the same.

For Petitioner : Mr.P.Rajkumar Pandian

For Respondent : No Appearance

ORDER

This Criminal Revision Case is filed against an interim order passed in C.M.P.No.5855 of 2014 in M.C.No.17 of 2014, thereby, allowing the petition filed by the respondent/wife, directing payment of Rs.7,000/- as monthly maintenance by the petitioner/husband herein to the respondent/wife and directing the protection officer to submit a report within two weeks.

2. Mr.P.Rajkumar Pandian, learned Counsel for the petitioner would submit that the primary grievance of the petitioner is that even though the Trial Court is entitled to pass ad-interim exparte order for maintenance even without hearing petitioner/husband herein, the same can only be as an interim order, while granting opportunity for the husband to file counter and contest the claim of the interim maintenance at the rate of Rs.7,000/-. But, however, the order clearly reads that the petition is allowed, as far as the maintenance is concerned, on the very



first occasion itself without granting an opportunity whatsoever for the petitioner. It is the further submission that considering monthly income of the petitioner, this Court has granted interim stay on a condition that the petitioner should pay a monthly maintenance of Rs.4,000/- per month, which is being regularly complied with by the petitioner till date.

3. Even though the name of the respondent is printed, there is no appearance on behalf of the respondent even after granting of opportunities. On an earlier occasion when the matter was referred for the Lok Adalath, it is reported that the respondent was absent. Therefore, this Court proceeded to hear the appellant on merits.

4. Upon considering arguments of the learned Counsel for the petitioner and the order passed by the learned Judicial Magistrate, it is clear that the impugned order, in this Criminal Revision Petition, is passed exparte on the date of moving the petition without notice to the respondent. However, paragraph No.4 of the order states that the miscellaneous petition is allowed. Therefore, the said procedure adopted by the learned Magistrate is incorrect. As submitted by the learned Counsel for the petitioner, though it is open for the learned Judicial Magistrate to grant exparte ad-interim monthly maintenance, the interim petition should not have been allowed on the said date itself and an opportunity should have been granted to the petitioner to contest the interim monthly maintenance.

5. I am, therefore, inclined to allow this Criminal Revision Case on the following terms:-

(i) the order of the learned Magistrate, Udthagamandalam, dated 10.07.2014 in C.M.P.No.5855 of 2014 in M.C.No.17 of 2014 is set aside and inasmuch as it grants interim maintenance of Rs.7,000/- per month;

(ii) it would be open for the husband to file a counter affidavit in C.M.P.No.5855 of 2014 and upon filing of such counter affidavit, the petition shall be further disposed of in accordance with law by the learned Magistrate;

(iii) that the interim maintenance payable till the date of fresh determination in the C.M.P.No.5855 of 2014 shall be Rs.4,000/- as fixed by this Court, while granting interim order and as being paid by the petitioner every month and the petitioner continue to pay the same till the decision of the learned Judicial Magistrate in the above C.M.P.No.5855 of 2014 in M.C.No.17 of 2014.



6. This Criminal Revision Case is disposed of accordingly.
Consequently, M.P.No.1 of 2014 is closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

grs

To

1. The Judicial Magistrate,
Udhagamandalam.
2. The Chief Judicial Magistrate,
The Nilgiris.

+1cc to Mr.P.Rajkumar Pandian, Advocate, S.R.No.59605

CRL.R.C.NO.771 OF 2014

KSM(CO)
PBS/03/12/2021