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Crl.RC.No.456 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.456 of 2022
and
Crl.M.P.No.14377 of 2022

G.Moorthy

...Petitioner/Respondent

-Vs-

M.Sumathi

...Respondent/Petitioner

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order in M.C.No.14 of 2018 dated 04.03.2022 on the file of the learned Family Judge (FC), Family Court, Tiruvallur.

For Petitioner : Mr.Avinash Wadhwani

For Respondent : M/s.Pari Gopal



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ORDER

This Criminal Revision has been filed to set aside the order passed by the learned Family Judge (FC), Family Court, Tiruvallur in M.C.No.14 of 2018 dated 04.03.2022.

2. The petitioner is husband and the respondent is wife. Originally, the respondent filed maintenance case in M.C.No.14 of 2018 before the Family Court, Tiruvallur, seeking monthly maintenance of Rs.10,000/- for the respondent. The learned Judge, Family Court, after hearing both the parties and after analysing the documents on record, by order dated 04.03.2022, partly allowed the petition and ordered maintenance of Rs.7000/- p.m.

3. Challenging the order passed by the learned Judge, Family Court in the Maintenance case filed by the Petitioner/Wife under Section 125 Cr.P.C, present appeal has been filed.



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4. The learned counsel appearing for the petitioner/husband would submit that the Petitioner herein/husband is getting a salary of Rs.6,000/- and the learned Judge, Family Court without considering the monthly salary of the Petitioner, has erroneously ordered maintenance of Rs.7,000/- p.m., which is more than the income of the petitioner/husband. As per the decision of the Hon'ble Supreme Court reported in **2021 2 SCC 324** in the case of ***Rajnish Vs. Neha and another***, both the parties would submit the statement of assets and liabilities within the stipulated time. Whereas the petitioner has not filed the statement of the assets and liabilities as per the direction of the Hon'ble Supreme Court. The learned Judge, Family Court would have pointed out the same and directed the Respondent to comply the direction of the Hon'ble Supreme Court. Despite the Respondent herein has not filed the statement of assets and liabilities, the learned Judge, Family Court should not pass any specific Order and direct the Respondent herein to file the statement of assets and liabilities as per the direction of the Hon'ble Supreme Court which is mandatory. Neither the respondent followed the direction, nor the learned Judge, Family Court adhered to the direction of the Hon'ble Supreme Court. Therefore, without any materials, the learned Judge, Family Court drawn



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adverse inference and partly allowed the petition even they had not filed the statement of assets and liabilities. Parallely, the order of maintenance of Rs.7,000/- p.m., is exorbitant which is also against the fundamental principle of Section 125 Cr.P.C., which clearly states that the husband having sufficient means and refused to maintain the wife, unable to maintain herself. Whereas the respondent herein has not produced the proof of income of the petitioner or respondent. The respondent herein is a working woman and she has not filed statement of assets and liabilities and she was suppressing his income capacity. Under those circumstances, the Order of the learned Judge, Family Court is against the Provision of Section 125 of Cr.P.C., Therefore, it is liable to be dismissed.

5. The learned counsel appearing for the respondent/wife would submit that the petitioner has not produced any document regarding the salary of the petitioner and also he has not revealed his financial capacity. Therefore, the learned Judge, Family Court considered the fact and ordered a sum of Rs.7,000/- as maintenance, which is well founded and does not call for any interference.



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6. Heard the learned counsel for the petitioner and the respondent and perused the records.

7. Admittedly, the petitioner is husband and the respondent is wife. The relationship between the parties are not in dispute. Both are living separately and HMOP is pending before the court below and it is also not in dispute. However, the learned counsel for the petitioner relied on the direction of the Hon'ble Supreme Court in *Rajnesh's case* cited supra for the proposition that the statement of assets and liabilities to be submitted by the respondent/wife. Whereas the respondent herein had not filed any statement of assets and liabilities and despite the judgment of the Hon'ble Supreme Court, neither the respondent followed the direction nor the learned Family Judge adhered to the direction of the Hon'ble Supreme Court. Ignoring the same and without any material, the learned Judge, Family Court has passed order. Therefore, the order passed by the learned Judge, Family Court is set aside and the matter is remitted back to the learned Judge, Family Court and both parties are directed to file their statement of assets and liabilities as per the direction of the Hon'ble Supreme Court within a period of three weeks from today i.e., on or before 18.11.2022 before the learned Judge, Family



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8. On receipt of the same, the learned Judge, Family Court, Tiruvallur, after giving opportunity to both parties dispose the case since it is maintenance under Section 125 of Cr.P.C. and the case is of the year 2018, the learned Judge, Family Court is directed to dispose of the case in M.C.No.14 of 2018 on merits, on or before 23.12.2022 and both the parties are directed to extend their fullest cooperation for the disposal of the case within the stipulated time.

Accordingly, the criminal revision case is disposed of. Consequently, connected Miscellaneous Petition is closed.

28.10.2022

Index : Yes/No
Speaking order/non speaking order
dh

Note: Issue Order Copy on 04.11.2022

To

The Family Judge (FC),
Family Court, Tiruvallur.



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P.VELMURUGAN, J.,

dh

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