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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.1174 of 2019

K.Sai Krishnan

... Petitioner/Respondent

Versus

1. K.Shanmuga Priya
2. Minor S.Sai Aniruth

Minor second petitioner rep. by his mother
and natural guardian K.Shanmuga Priya

... Respondents/Petitioners

Prayer: Criminal Revision Case filed under Section 397 read with Section 401 Cr.P.C., 1973 to set aside the order, dated 19.03.2019 made in M.C.No.305 of 2016 on the file of the V Additional Family Court, Chennai.

For Petitioner : Mrs.Kamachi.D

For Respondents: K.S.Jeyaganeshan

O R D E R

This Revision Case is filed by the husband aggrieved by the order of maintenance by the V Additional Family Court, Chennai, awarding a sum of Rs.10,000/- per month to the first respondent herein/wife and Rs.15,000/- to the second respondent herein (minor)/son, in all totalling to Rs.25,000/- per month from the date of filing of the petition i.e., from 28.07.2016.

2. Mrs.Kamachi.D, the learned Counsel appearing for the petitioner would submit that the Trial Court exorbitantly fixed a sum of Rs.25,000/- without taking into account the fact that even though the petitioner was in employment in a multi-national company earlier, due to family problems, he had quit the employment and he is now presently doing his own business as start-up along with his colleagues and is earning a sum of Rs.40,000/- per month. The income was taken at Rs.25 lakhs per year based on school form and it was given in the year 2014 which does not actually and correctly reflect his earning. This apart, the first respondent had never taken care of the



petitioner or his parents and she is also an educated lady and she cannot utilise this matrimonial conflict as a source of perennial income for her without indulging in any work and without even caring for family. The petitioner is put to grave prejudice on account of the matrimonial issue.

3. This apart, she would submit that before filing of the petition, on various dates, a total amount of Rs.15,00,000/- have been transferred to the petitioner and the same ought to have been duly taken into account by the Family Court while awarding the maintenance. This apart, after filing of the petition also, the petitioner continued to pay monthly rent and incurred expenditure, the proof of which is marked as Ex.R-3 etc., rent itself totally amounting to a sum of Rs.1,14,000/-, which should have been adjusted as the sum paid for the rent of the house in which the first respondent/wife and the child was living and for their expenses.

4. Per contra, Mr.K.S.Jeyaganeshan, learned Counsel appearing on behalf of the respondents would submit that the annual income of the respondent was Rs.25,00,000/- and Ex.P-7 was marked before the Trial Court and no contra evidence, to dispute the same, has been filed by the petitioner/husband either by marking income tax returns or other documents and therefore, after taking into account the income of the petitioner, the Trial Court had, as a matter of fact, awarded only a lesser amount which need not to be interfered with. He would submit that the amounts were paid to the wife on various occasions prior to the file of the petition was on account of the transactions between them and therefore, that cannot be taken into account while granting of maintenance or adjustment thereof. As far as the amount paid by way of rent is concerned, he would submit that the sum is paid to the house owner and not directly to the petitioner and therefore, that should not be adjusted.

5. I have considered the rival submissions made on either side and considered the material papers on record. While considering the annual income of the petitioner, as claimed by the wife at Rs.25,00,000/- and the amount awarded by the Trial Court, I am of the view that it does not exceed 25% of the amount as directed by the Apex Court in Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy [(2017) 14 SCC 200] and therefore, I am of the view that the quantum fixed by the Trial Court is in order.

6. As far as the contention regarding the payment of Rs.15,00,000/- is concerned, since the said amount was paid prior to the date of filing of the petition, now the same cannot sought to be adjusted for the purposes of maintenance from the



date of filing of the maintenance petition i.e., from 28.07.2016. As far as the payment regarding the education of the child is concerned, on a perusal of the record, the payment of rent alone comes to the tune of Rs.1,14,000/-. But, however, the learned Counsel points out that from the other accounts that during the entire period from 28.07.2016 to November, 2017, he was maintaining the entire family and the total amount of maintenance of Rs.3,75,000/- should be excluded.

7. On a perusal of the record, there is also some evidence regarding the payment and taking care of expenditure, which cannot be totally ignored. At the same time, at the Revision stage, this Court cannot go item wise and check whether the petitioner had exceeded to the amount of Rs.25,000/- per month or not and under these circumstances, I am of the view that instead of taking the total sum of Rs.3,75,000/-, it would be fair to both the parties to deduct a sum of Rs.2,00,000/- for the said payments made by the husband. Therefore, this Criminal Revision Case is ordered on the following terms:-

(i) The order, dated 19.03.2019 made in M.C.No.305 of 2016 on the file of the V Additional Family Court, Chennai, thereby, fixing the maintenance as sum of Rs.10,000/- per month to the first petitioner and Rs.15,000/- per month to the second petitioner is confirmed;

(ii) Of the said amount, for the amount spent by the petitioner during the period from 28.07.2016 to 30.11.2017, a total sum of Rs.2,00,000/- shall be deducted from the total sum payable and the rest shall be payable by the petitioner;

(iii) After the said deduction, arrears, if any payable, shall be paid by the petitioner within two months from the date of receipt of the copy of the order. If there is any failure, the respondents will be at liberty to move an application before the Family Court for proper enforcement;

(iv) It is made clear that this maintenance shall include the school fees also to be paid by the wife in future.

8. With the above said observations, the present Criminal Revision Case is disposed off. Consequently, Crl.M.P.No.15587 of 2019 is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

grs



To

The V Additional Principal Judge,
Family Court, Chennai.

+1cc to Mrs.D.Kamachi, Advocate SR.No.33511

Cr1.R.C.No.1174 of 2019

SSI (CO)
GMY (24/06/2022)