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CrI.RC.No.1509 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.1509 of 2022

M.Gunaseelan

... Petitioner

Vs.

1.Induja

2.Minor Sanjana

... Respondents

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to call for the records of the order dated 23.09.2022 passed by the learned Judicial Magistrate No.II, Ponneri in Maintenance Case bearing number M.C.No.2 of 2022 and set aside the same.

For Petitioner

: M/s.Nathan and Associates

ORDER

This Criminal Revision Case has been filed seeking to set aside the order dated 23.09.2022 passed by the learned Judicial Magistrate No.II, Ponneri in the Maintenance Case in M.C.No.2 of 2022.



2. The marriage between the petitioner and the 1st respondent was solemnized on 19.10.2018 and they begotten a female child out of their lawful wedlock. Subsequently, they got separated and the 1st respondent is living separately with the 2nd respondent/minor daughter. The 1st respondent/wife along with the minor child filed a petition under Section 125 Cr.P.C. before the Judicial Magistrate No.II, Ponneri, seeking maintenance of Rs.50,000/- from the petitioner/husband and after enquiry, the learned Magistrate, ordered a sum of Rs.5,000/- each to the wife and minor child. Challenging the said order, the husband has filed the present revision before this Court.

3. Heard the learned counsel for the petitioner and perused the materials on record.

4. The petitioner is the husband. The 1st respondent is wife and the 2nd respondent is the daughter of the petitioner. Though the matter came up for admission, since the revision has been filed by the husband challenging the order of maintenance to the wife and daughter, this Court is inclined to dispose of the revision at the admission stage itself by going through the materials on record.



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5. For the sake of convenience, the parties are referred to as per their relationship as husband and wife and child.

6. The contention of the learned counsel for the husband is that the wife had left the matrimonial home without any valid reason. Even before the marriage, the wife had paralytic disease and she suppressed the same and cheated the husband and therefore, she is not qualified for getting maintenance.

7. The Hon'ble Supreme Court, in the case of ***Rajnesh Vs. Neha and Another reported in (2021) 2 SCC 324*** has held that in the maintenance case, both the parties have to file affidavit of disclosure of Assets and Liabilities before the Family Court. In this case, though the husband denied his income and earnings, he did not follow the directions of the Hon'ble Supreme Court. Therefore, the learned Magistrate has discussed that the petitioner has got sufficient means and his wife and child are unable to maintain themselves and despite having sufficient means, the husband neglected to maintain them and hence, the learned Magistrate has ordered a sum of Rs.5,000/- each to the wife and child towards monthly maintenance.

8. Since the proceedings under Section 125 Cr.P.C. itself is summary in nature, it can be decided based on the affidavit and counter affidavit and



also based on the documentary evidence filed if any, to prove the income.

However, now the Hon'ble Supreme Court has given directions that both the parties have to file affidavit of Assets and Liabilities and based on which, the matter can be decided. Since the husband had not disclosed the Assets and Liabilities, the trial Court has held that the husband is having sufficient means to maintain his wife and child and this Court does not find any perversity in the order passed by the learned Magistrate. Even during the cross examination, the husband admitted that he was earning Rs.28,000/- and subsequently, his salary was increased to Rs.38,000/-. Therefore, the petitioner is a man of means and he is liable to maintain his wife and child. Under Section 125 Cr.P.C., the wife who is unable to maintain herself is entitled for maintenance if she proves that the husband neglected or refused to maintain her inspite of having sufficient means provided the wife should not be in adultery or obtained divorce by mutual consent or left the matrimonial home without any reason. Other than that there is no other reason for disqualifying the wife from getting maintenance. The petitioner has not substantiated any of the above mentioned disqualification. Therefore, the wife is entitled for the maintenance.



9. Further, the relationship between the parties is not in dispute; the paternity of the child is also not disputed; both the petitioner and the respondents are living separately which is also not in dispute. Under these circumstances, this Courts does not find any perversity in the order passed by the learned Magistrate and there is no prima facie ground to admit the revision.

10. Accordingly, this Criminal Revision Case is dismissed at the admission stage itself.

18.11.2022

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To

The Judicial Magistrate No.II,
Ponneri.



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P.VELMURUGAN,J.

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