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Crl.RC.No.239 of 2020



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2022

Coram:

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

Criminal Revision Case No.239 of 2020

and

Crl.M.P.No.1741 of 2020

M.Baskar

... Petitioner

Vs.

Bharathi

... Respondent

Prayer: Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to call for the records in M.C.No.2 of 2018 on the file of the Judicial Magistrate, Arakkonam to examine the correctness, legality of the findings and set aside the order dated 03.08.2019.

For Petitioner : Mr.R.Sundarrajan

For Respondent : Mr.K.S.Purushothaman

ORDER

This Criminal Revision Case has been filed seeking to examine the correctness and legality of the findings in M.C.No.2 of 2018 on the file of the Judicial Magistrate, Arakkonam, dated 03.08.2019 and set aside the same.

2. The petitioner is husband and the respondent is wife. For the sake



of convenience, the parties are referred to as per their relationship.

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3. The marriage between the petitioner and the respondent took place on 09.02.2014 and thereafter, due to misunderstanding, they both separated. Thereafter, the wife had filed a maintenance case in M.C.No.2 of 2018 on the file of the Judicial Magistrate, Arakkonam and the learned Magistrate, passed an order of maintenance of Rs.8,000/- towards monthly maintenance to the wife. Aggrieved over the same, the husband has filed the present revision before this Court.

4. The learned counsel for the husband would submit that after marriage, since the husband got a Government Job in Chennai, he shifted his house to Chennai from Arakkonam. Though the wife initially refused to come to Chennai, subsequently, she came to Chennai and resided with the husband for about one month. Thereafter, she left Chennai and deserted the husband voluntarily without any valid reason. He would further submit that it is only an ex-parte order. Since the husband is working as Office Assistance in the Collector Office, Chennai, he could not attend the Court and the counsel who was engaged also, had not properly instructed him and



therefore, the ex-parte order came to be passed. He would further submit that the husband has got age old mother and he has to take care of her. However, he is ready to give 1/3 of his salary to the wife towards monthly maintenance. He would further submit that the husband had filed the petition for divorce only for name sake and still he is interested to live with the wife.

5. The learned counsel for the wife would submit that the husband only had driven out the wife from the matrimonial home and when she filed a petition for maintenance, he also filed a petition for divorce at Chennai in HMOP No.246 of 2015 before the Family Court, Chennai, in order to give trouble to the wife. Since the wife was residing in Arakkonam, she could not attend the Court and contest the case and therefore, she filed a petition for transfer and the same was allowed and now the matter is pending before the Sub Court, Arakkonam, in HMOP No.43 of 2017. He would further submit that the husband has not paid any single pie to the wife from the date of desertion and also filing of the petition and there are huge amount of arrears and that the wife is struggling for survival. The learned Magistrate rightly ordered a sum of Rs.8,000/- as monthly maintenance to the wife considering the cost of living and price boosting from day to day and therefore, the order



of maintenance of Rs.8,000/- is not higher side and it is a reasonable amount. Therefore, there is no merit in the revision and the revision is liable to be dismissed.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the materials on record.

7. The relationship of the parties is not in dispute. Admittedly, there is no issue and both the husband and wife are living separately in Chennai and Arakkonam respectively. The husband is working as Office Assistant in Collector Office, Chennai, and his then salary was Rs.15,000/- per month and the wife is unable to maintain herself. The wife had filed a petition for maintenance and the trial Court ordered a sum of Rs.8,000/- per month. Though the husband stated that it is only an ex-parte order, it is well settled proposition of law that the proceedings under Section 125 Cr.P.C. is summary in nature and therefore, even the ex-parte order is an executable order. However, it is not case of the husband that the wife has got sufficient means to maintain herself and he has fairly conceded to pay 1/3 of his salary to the wife.



8. Considering the entire materials and the status of the husband and also the submission made by the learned counsel for that husband that the husband is ready to pay 1/3 of his salary, the order of maintenance of Rs.8,000/- passed by the Court below is reduced to Rs.5,000/- per month from the date of filing of the maintenance case to till December 2022. The husband is directed to pay the entire arrears amount to the wife from the date of filing of the maintenance case to till December 2022 on or before 01.02.2023 failing to pay the arrears amount, the learned Magistrate shall issue warrant against the husband straight away without any formal application or petition from the wife.

9. Further, the husband is directed to pay 1/3 of his salary to his wife from January 2023 on or before 5th of every English Calender month and failing to pay any one of the monthly maintenance, the learned Magistrate shall issue warrant against the husband.

10. With the above modifications and directions, this Criminal Revision Case is disposed of. Consequently, connected Miscellaneous Petition is closed.

22.12.2022

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Note: Issue order copy on 26.12.2022



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P.VELMURUGAN,J.

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To
The Judicial Magistrate,
Arakkonam

Criminal Revision Case No.239 of 2020

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