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Crl RC .No.771 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl RC No.771 of 2018

Naajira

...Petitioner / 1st Petitioner

Vs.

K.Saleem Basha

...Respondent / Respondent

Prayer: Criminal Revision case is filed under Section 397 (1) r/w 401 of Cr.PC to set-aside the order dated 29.12.2017 made in M.C.No.2 of 2014 on the file of the learned Judicial Magistrate, Dharapuram in respect of the petitioner by allowing this Criminal Revision Petition.

For Petitioner : Mr.M.Guruprasad

for Mrs.R.Vigneswari

For Respondent : No appearance

ORDER



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This Criminal Revision case has been filed against the order passed by the learned Judicial Magistrate, Dharapuram, in MC.No.2 of 2014 dated 29.12.2017, allowing the maintenance petition insofar as the child is concerned and dismissing the same insofar as the wife i.e the petitioner herein.

2. The petitioner filed the maintenance case before the Court below on the ground that she was married to the respondent on 19.12.2002 and through the wedlock, the child was born on 16.06.2004. Several allegations were made against the respondent with regard to demand for dowry and harassment and the resultant complaints that were given in the police station. The petitioner had made an averment to the effect that the respondent is earning a sum of Rs.20,000/- per month and he is owning several immovable properties. In view of the same, the petitioner sought for maintenance of a sum of Rs.5,000/- to herself and sum of



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Rs.5,000/- for the child.

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3. The maintenance case was contested by the respondent and the main stand that was taken by the respondent is that he is willing to take back the petitioner and she is intentionally living away from the respondent and that the respondent has also filed a petition for restitution of conjugal rights to direct the petitioner to live along with him. Hence, insofar as the payment of maintenance to the petitioner is concerned, the respondent has resisted the same on the ground that the petitioner is willfully living away from the respondent. According to the respondent, he is only earning a sum of Rs.1,500/- per week and only a sum of Rs.1,000/- will remain with him after all the expenses and it is impossible for the respondent to pay a maintenance of Rs.10,000/- (5,000/- + 5,000/-) to the petitioner and the child.



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4. The Court below on considering the facts and circumstances of the case came to a conclusion that the petitioner is willfully staying away from the respondent and has deserted him. In view of the same, the Court below refused to grant maintenance to the petitioner. Insofar as the child is concerned, the Court below directed the respondent to pay a sum of Rs.4,000/- per month towards maintenance. Aggrieved by the same, this Criminal Revision case has been filed before this Court.

5. Heard Mr.M.Guruprasad, learned counsel for the petitioner. The respondent has been served and his name has also been printed in the cause-list and there is no representation either in person or through counsel.

6. The Court below has denied the payment of



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maintenance to the petitioner only on the ground that the petitioner had deserted the respondent and she was willfully staying away from him. The Court below in order to strengthen this finding, has placed reliance upon the petition filed by the respondent before the Sub-Court, Dharapuram, seeking for the relief of restitution of conjugal rights.

7. In the considered view of this Court, on carefully going through the averments and the materials available on record, it is seen that there was a dowry demand by the respondent and the same resulted in the complaint being lodged by the petitioner before the All Women Police Station, Dharapuram. In view of the same, there was a valid reason for the petitioner to stay away from the respondent. Just because, the respondent has filed a petition seeking for the relief of restitution of conjugal rights that does not mean that the petitioner is willfully staying away from the



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respondent. If the respondent has created an atmosphere where it is not possible for the petitioner to live along with him, that cannot be construed as a desertion.

8. The Court below has not given any finding with regard to the income earned by the respondent. However, the maintenance amount has been fixed for the child at the rate of Rs.4,000/- per month. Even though, this Court is not convinced with the reasoning given by the Court below for denying the payment of maintenance to the petitioner, this Court is not in a position to determine the amount of maintenance to be fixed for the petitioner. This is in view of the fact that there is no material before this Court and the Court below has also not rendered any findings in this regard. In view of the same, this Court is inclined to remand the matter back to the file of the Judicial Magistrate, Dharapuram to fix the maintenance amount payable to the



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petitioner.

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9. It is made clear that the matter is remanded back to the file of the Court below only to give a specific finding on the income of the respondent and to fix the amount of maintenance to be paid to the petitioner. Apart from this, no other issue should be entertained by the Court below. This process shall be completed by the Court below within a period of three months from the date of receipt of a copy of this order.

10. In the result, the order passed by Judicial Magistrate, Dharapuram, dated 29.12.2017 made in M.C.No.2 of 2014 is hereby setaside insofar as denying the payment of maintenance to the petitioner and the matter is remanded back to the file of the learned Judicial Magistrate, Dharapuram. The scope of remand has already been stated supra and the learned Judicial Magistrate shall



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confine the enquiry and findings only to that extent. Accordingly, this Criminal Revision case is allowed with the above directions. No costs.

30.03.2023

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
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To
The Judicial Magistrate, Dharapuram

N. ANAND VENKATESH, J.

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