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CrI.R.C.No.1273 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No. 1273 of 2019

G.Viji @ Vijayakumar

.. Appellant

Versus

V. Gayathri

.. Respondent

Criminal Revision filed under Section 397 & 401 of the Criminal Procedure Code, to set aside the order dated 16.10.2019 made in M.C. No. 399 of 2014 on the file of the learned V Additional Principal Judge, Family Court, Chennai.

For Petitioner	:	Mr. J.S. Arunkumar
For Respondent	:	No appearance

ORDER

This Criminal Revision Case has been filed to set aside the order dated 16.10.2019 made in M.C. No. 399 of 2014 on the file of the learned V Additional Principal Judge, Family Court, Chennai.

2. For the sake of convenience, the parties shall be referred to as per their litigative status in this Criminal Revision Case.



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3. The Petitioner is the husband and the Respondent is his wife. The Respondent-Wife has filed M.C. No. 309 of 2014 before the learned V Additional Principal Judge, Family Court, Chennai under Section 125 of Code of Criminal Procedure praying to direct the Petitioner-Husband to pay Rs.10,000/- per month to her towards maintenance.

4. As per the averments in M.C. No. 399 of 2014, the marriage between the Petitioner-Husband and the Respondent-Wife was solemnised on 22.03.2004 at M.M. Thirumana Mandapam, Strahans Road, Otteri, Chennai as per Hindu rites and customs. After their marriage, both the Petitioner and the Respondent commenced their matrimonial journey in the house of the Petitioner and lived peacefully for some time. According to the Respondent-Wife, out of their marriage, no children were born to them. It is stated by the Respondent-Wife that the Petitioner-Husband is addicted to alcohol and under the influence of alcohol, she was subjected to matrimonial cruelty. Therefore, unable to tolerate the matrimonial cruelty inflicted on her, she left the matrimonial home on 09.02.2014 and from then on she is living with her parents. It is alleged by the Respondent-Wife that after she left the matrimonial company of the Petitioner, the Petitioner started to live with another women. It is further stated that the Petitioner-Husband owns movable



and immovable properties in Ambattur, Chennai. The Petitioner-Husband is receiving income from the property besides he is employed and earning a sum of Rs.20,000/- per month. On the other hand, the Respondent-Wife is not resourceful enough to maintain herself and she has to depend on her parents even for her domestic needs. Therefore, the Respondent-Wife has filed the M.C. No. 399 of 2014.

5. On notice, the Petitioner-Husband filed a counter opposing the Maintenance Case. It is his contention that after marriage, it was noticed that the Respondent-Wife is not capable of giving birth to a child and she is infertile. Even though the Petitioner requested the Respondent to undergo IVF procedure to procure a child, she refused to do so. It is in this context, frequent quarrels cropped up between the Petitioner and the Respondent and not otherwise. The Petitioner-Husband denied that he was addicted to alcohol and even ready to subject himself to any medical examination to disprove such an allegation. It is also submitted that the Petitioner did not subject the Respondent to any matrimonial cruelty and she lived with her peacefully. Due to a petty quarrel, the Respondent left the matrimonial home on her own accord inspite of requests made by the Petitioner not to leave the matrimonial home. It is stated that the Respondent is working in a private company and she is



resourceful enough to maintain herself besides she is also receiving rent from the immovable property owned by her. According to the Petitioner, the Respondent is earning Rs.15,000/- per month through her private employment. She is having own independent house at No.79-A, Shenoy Nagar, Kathiravan Colony, Aminjikarai, Chennai. Thus, it is contended that the Respondent has independent source of income to maintain herself and therefore, he prayed for dismissal of the maintenance case.

6. Before the learned V Additional Principal Judge, Family Court, Chennai, the Respondent examined herself as PW1 and marked three documents as Exs. P1 to P3. On the other hand, the Petitioner examined himself as RW1 and marked Exs. R1 to R4. Taking note of Ex.R4, Pay slip of the Petitioner and the other facts pleaded by the parties, the learned V Additional Principal Judge, Family Court, by the order dated 16.10.2019, directed the Petitioner herein to pay a sum of Rs.6,000/- per month as maintenance to the Respondent from 27.08.2014, being the date of filing the Petition. Aggrieved by the aforesaid order, the present Criminal Revision Case is filed by the Petitioner-Husband.

7. When the Criminal Revision Case was taken up for hearing, this



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Court, by order dated 22.09.2019 made in Criminal Revision Case No. 1273 of 2019 and Crl. M.P. No. 17243 of 2019 granted interim stay on condition the Petitioner/husband pay 30% of the arrears of maintenance amount awarded by the learned V Additional Principal Judge, Family Court, within a period of three weeks. If so calculated from 27.08.2014 till December 2014 the amount accumulated would be $6000 \times 5 \text{ months} = \text{Rs.}30,000/-$. The interim stay was granted by this Court on 22.11.2019 on which date, the arrears of maintenance amount would be $(3,60,000 \times 30\% = \text{Rs.}1,08,000/- + 9000) \text{ Rs.}1,17,000/-$. It is stated that on 08.01.2020, the revision Petitioner had deposited Rs.1,17,000/- to the credit of M.C. No. 399 of 2014.

8. When the above Criminal Revision Case is taken up for hearing before this Court on an earlier occasion on 09.06.2023, a learned Judge of this Court had referred the dispute for mediation and directed both the parties viz., Revision Petitioner/Husband and the Respondent/Wife to appear before the Tamil Nadu Mediation and Conciliation Centre on 30.06.2023.

9. As per the report dated 07.08.2023 obtained from the Tamil Nadu Mediation and Conciliation Centre attached to this Court, since both the parties did not appear consecutively for three hearings, Mediation could not



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commenced. Therefore, the records were sent back to this Court. From the mediation records, it could be inferred that from 07.08.2023 till 08.09.2023 there was no representation for both parties before the Mediation Centre. Therefore, this Court directed the registry to post this case for hearing. On 08.09.2023, when the above case was listed for hearing, there was no representation for both sides, hence, the Criminal Revision Case was directed to be posted today under the caption "for dismissal".

10. Accordingly, this case came up for hearing today under the caption "for dismissal". Today, the learned Counsel for the Revision Petitioner appeared and apologised for his absence during the previous hearing and proceeded to make his submissions on merits of the case.

11. According to the learned Counsel for the Revision Petitioner, there is no dispute between the Petitioner and the Respondent. They did not have children and this is heart-burning for both the Petitioner and the Respondent. In order to wriggle out of such a situation, the Petitioner requested the Respondent to undergo treatment for In-Vitro fertilization. However, the Respondent refused to undergo such a treatment and consequently she deserted the matrimonial home. It is stated that the desertion of the Respondent from the



matrimonial home of the Petitioner is without any valid and sufficient reason.

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The Respondent went on her own volition and preferred a criminal complaint against him before the All Women Police Station, Ambattur as though he had treated her cruelly, seeking dowry. Based on the complaint preferred by the wife, a case was registered by the All Women Police Station, Ambattur, in Crime No.7 of 2014. Based on the said case the Petitioner was also arrested. Since he was arrested, he was suspended from his job by the Corporation of Chennai which forced him to file W.P. No.12317 of 2015 before this Court. By an order dated 24.04.2015, the order of suspension passed by his employer on 12.09.2014 was stayed by this Court in M.P. No. 1 of 2015 in W.P. No.12317 of 2015. The Petitioner also marked the order of suspension as Ex.R1 and the copy of the order passed by this Court as Ex.R-2. This conduct of the Respondent in giving a false complaint which led to the incarceration of the Petitioner is unlawful and arbitrary. In view of the suspension order passed by his employer, the Petitioner did not get his salary. Pursuant to the order passed by this Court only, he was permitted to join duty and the joining letter was also marked as Ex.R3 before the learned V Additional Principal Judge, Family Court, Chennai.

12. It is the submission of the learned Counsel for the Revision



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Petitioner that due to the cruelty inflicted by the Respondent towards the Petitioner, the Petitioner has preferred H.M.O.P. No. 2051 of 2014 before the learned I Additional Judge, Family Court, Chennai, seeking divorce on the ground of cruelty and it is pending. He has also submitted that as per the direction of this Court he had deposited 30% of the maintenance amount. In any event, the Petitioner himself is finding hard to meet his basic expenditure as he had spent enormous amount towards litigating the false criminal case filed by the Respondent against him. Taking note of such conduct of the Respondent, the learned V Additional Principal Judge, Family Court, Chennai, ought not to have granted maintenance to the Respondent. Further, the Respondent herself is resourceful enough to maintain herself, while so, the direction issued by the learned V Additional Principal Judge, Family Court, Chennai, is unlawful and unjust. Accordingly, the learned counsel for the Petitioner prayed for setting aside the order dated 16.10.2019 passed by the learned V Additional Principal Judge, Family Court, Chennai and to allow the Criminal Revision Case.

13. The grounds of revision predominantly revolves around the fact that the Respondent owns property of her own and she is also employed. However, to substantiate this averment, the Petitioner has not marked any



document. Therefore, it can be construed that the averments that the Respondent is resourceful enough to maintain herself out of the income generated from the properties owned by her as also through her income from employment are not proved by the Petitioner. In the absence of such proof, the learned Judge had considered the salary slip of the Respondent in the maintenance case and awarded maintenance of Rs.6,000/- per month to the wife. In any event, providing maintenance to the Respondent-Wife by the Petitioner-Husband is not only moral but also legal.

14. The object with which the provisions under Section 125 Cr.P.C were enacted is to provide speedy remedy to those who are in distress. In this case, taking note of the fact that the Respondent-Wife is unable to maintain herself and she is in a penurious condition, the learned Judge relied on the decision of this Court in *Mani Vs. Jayakumar* reported in *Crl L J 3708* to conclude that when it is proved that the Respondent has no independent source of income of her own, the Petitioner is under an obligation to pay maintenance to her. Such a conclusion arrived at by the Court below cannot be said to be arbitrary and illegal. There is no acceptable reason for this Court to interfere with the order passed by the learned V Additional Principal Judge, Family Court, Chennai, in granting the relief of maintenance to the wife.



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WEB COPY15. It is seen from the records, as also from the submissions of the learned counsel for the Petitioner that except depositing 30% of the arrears of maintenance amount, as has been directed by this Court on 22.11.2019, the revision Petitioner did not deposit or pay any further amount. The Petitioner ought to have continued to deposit the monthly maintenance of Rs.6000/- awarded by the learned V Additional Principal Judge, Family Court, Chennai, but he did not do so. Therefore, the Respondent is directed to pay the maintenance amount as has been awarded by the learned V Additional Principal Judge, Family Court, Chennai in M.C. No. 399 of 2014 within a period of three months from the date of receipt of a copy of this order.

In the result, this **Criminal Revision Case is dismissed as devoid of merits.** The order dated 16.10.2019 made in M.C. No. 399 of 2014 on the file of the learned V Additional Principal Judge, Family Court, Chennai is confirmed. The Consequently, connected miscellaneous petition is closed.

22.09.2023

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

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To

The V Additional Principal Judge,
Family Court,
Chennai.



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SATHI KUMAR SUKUMARA KURUP, J

vsn/srm

Crl.RC. No. 1273 of 2019
and
Crl MP No. 17243 of 2019

22.09.2023