



Crl.R.C.(MD) No.307 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **03.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

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Permalsamy

... Petitioner/Respondent

Vs.

1.Krishnaveni

2.Minor.Dineshkumar
represented by his mother and natural
Guardian, Krishnaveni

... Respondents/Petitioners

Prayer : This Criminal Revision has been filed under Section 397 and 401 of Criminal Procedure Code, to call for the records in order of the Family Court, Srivilliputhur, in M.C.No.11 of 2018 dated 29.01.2020 and set aside the same.

For Petitioner : Mr.S.Ramasamy

For Respondents : Mr.K.Veilmuthu



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ORDER

The Criminal Revision is directed against the order passed in M.C.No. 11 of 2018 dated 29.01.2020 on the file of the Family Court, Srivilliputhur.

2. The first respondent/first petitioner for herself and on behalf of her minor son has filed a complaint under Section 125 Cr.P.C. seeking maintenance against the petitioner/respondent. Admittedly, the marriage between the petitioner and the first respondent was solemnized on 18.07.2001 and due to their wedlock, they were blessed with a male boy Dinesh Kumar. The petitioner has filed a counter statement raising objections.

3. During trial, the first respondent has examined herself as P.W.1 and exhibited 10 documents as Ex.P.1 to Ex.P.10. The petitioner has examined himself as R.W.1 and exhibited 1 document as Ex.R.1.



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4. The learned Judge of Family Court, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has partly allowed the petition and directed the petitioner to pay monthly maintenance at Rs.3,000/- (Rupees Three Thousand only) to the first respondent and Rs.4,500/- (Rupees Four Thousand and Five Hundred only) to the second respondent totally Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) from the date of petition and cost of Rs.10,000/- (Rupees Ten Thousand only). Aggrieved by the said order, the husband has come forward with the present revision.

5. At the time of admitting the revision, this Court in Crl.MP(MD)No. 2567 of 2020, which was filed for interim stay, taking note of the petitioner's undertaking to deposit 50% of the arrears of maintenance as well as the monthly maintenance, has directed the petitioner to deposit 50% of the arrears amount i.e., Rs.1,08,500/- (Rupees One Lakh Eight Thousand and Five Hundred only) within a period of four weeks from the date of that order and to deposit 50% of the monthly maintenance amount every month i.e., on or before 7th day of every English Calender month, before the trial Court.



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6. When the matter is taken up for hearing today, the learned counsel appearing for the respondents would submit that though the interim order was passed as earlier as on 05.10.2020, the petitioner has not chosen to comply with the said order till now.

7. It is evident from the records that the petitioner has earlier filed a petition in HMOP.No.98 of 2010 against the first respondent seeking divorce, that the said petition was ordered to be dismissed for default on 03.07.2012, that the petitioner has filed a restoration petition in I.A.No.26 of 2015 and in that petition, conditional order was passed directing the petitioner to pay the arrears of maintenance amounting to Rs.3,00,000/- (Rupees Three Lakhs only) together with Rs.5,000/- (Rupees Five Thousand only) towards litigation expenses to the first respondent on or before 18.04.2016 and that the petitioner, aggrieved by the said order, has preferred a civil miscellaneous appeal along with an application to condone the delay of 127 days in filing the appeal.

8. It is further evident that this Court, considering the submissions



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made on either side, has passed an order allowing the delay condonation petition on conditions that the petitioner shall pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) to the first respondent towards arrears of maintenance, within a period of three weeks from the date of receipt of a copy of that order and on payment of such sum, the appeal shall be numbered and directed to refer to the Mediation Centre and that in the event of non-payment of the amount mentioned above, the Miscellaneous Petition shall stands dismissed automatically, without further reference to the said Court.

9. The learned counsel appearing for the respondents would submit that the petitioner has not complied with the said order passed in C.M.P. (MD)No.10097 of 2016 dated 01.08.2018 and that even after getting the order for maintenance, in the petition filed under Section 125 Cr.P.C., the petitioner has not paid any amount till now.

10. The learned counsel appearing for the petitioner would fairly concede that the petitioner has not complied with the order of this Court



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dated 01.08.2018 and the present order dated 05.10.2020.

11. Admittedly, the petitioner had worked in Indian Army and got retired in 2018.

12. It is pertinent to note that during the divorce proceedings initiated at his instance, he has not chosen to pay the maintenance arrears as directed by that Court, while restoring the divorce petition, which was dismissed for default.

13. It is also pertinent to note that at the time of admission, the learned counsel appearing for the petitioner himself had submitted that the petitioner was ready to deposit 50% of arrears amount and 50% of the monthly maintenance to the respondents and recording the said undertaking given by the learned counsel appearing for the petitioner, the learned Judge of this Court has passed the said order directing him to deposit 50% of the arrears amount i.e., Rs.1,08,500/- (Rupees One Lakh Eight Thousand and Five Hundred only) within a period of four weeks from the date of that order and



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continue to pay monthly maintenance. Admittedly, the petitioner has not paid any amount so far.

14. At this juncture, it is necessary to refer the order of the Hon'ble Supreme Court in ***Kiran Tomar and others Vs. State of Uttar Pradesh and another***, reported in ***2022 SCC OnLine SC 1539***, wherein, the order of the High Court setting aside the judgment of the Family Court was challenged and the Hon'ble Supreme Court, while setting aside the order the High Court, has passed an order directing the second respondent husband to comply with the interim order already passed by the Family Court on or before 31.12.2022 to pay the entire arrears of maintenance payable to the appellants and on compliance of the above condition, the impugned order of the High Court was ordered to be set aside and the Criminal Revision was ordered to be restored, but on the other hand, in the event that the second respondent husband fails to comply with the above direction for the payment of arrears of maintenance by 31.12.2022, the Criminal Revision instituted by the second respondent shall stand dismissed.



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15. As rightly contended by the learned counsel appearing for the respondents, considering the above, it is clearly evident that the Court can very well pass conditional order for the payment of maintenance arrears.

16. Moreover, the Hon'ble Supreme Court in ***Rajnesh Vs. Neha and another*** reported in ***(2021) 2 SCC 324***, while giving guidelines for the fixation of maintenance amounts, has specifically held that striking off the defence of the respondent is an order which ought to be passed in the last resort, if the Courts find default to be wilful and contumacious, particularly to a dependant unemployed wife, and minor children.

17. It is pertinent to note that the Hon'ble Supreme Court has pointed out that it is the sacrosanct duty of the husband to provide financial support to his wife and to the minor children.

18. The Hon'ble Supreme Court has settled the position of law that Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. In ***Chaturbhuj Vs. Sita Bai*** reported in ***(2008)***



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2 SCC 316, the Hon'ble Supreme Court has specifically observed that object of the maintenance is to prevent vagrancy and destitution of the deserted wife by providing her food, clothing and shelter through a speedy remedy.

19. It is pertinent to note that right to get maintenance is not only a constitutional rights, but can be considered as an element of universal human rights. The very purpose of ordering maintenance is to prevent vagrancy as a result of strained relationships and to guarantee that the poor litigating spouse is not crippled as a result of a lack of funds to defend or prosecute the case.

20. Considering the legal position above referred, the petitioner, without complying with any order of this Court, has absolutely no right or *locus standi* to advance the arguments or to proceed with the main revision case.

21. As already pointed out, though this Court has passed the interim order on 05.10.2010, the petitioner has not even attempted to comply with



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the said order and more importantly, he has not even paid any single paisa to the respondents including his minor children.

22. Considering the above, this Court is of the clear view that the petitioner is not entitled to proceed further. Hence, this Court concludes that the criminal revision which is devoid of merits and the same is liable to be dismissed

23. In the result, this Criminal Revision case is dismissed.

03.04.2023

NCC : Yes/No
Index : Yes/No
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**ORDER MADE IN
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