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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02/01/2023

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.RC(MD)No.319 of 2022

and

Cr1.MP(MD)No.4035 of 2022

Karthick : Petitioner/Respondent

Vs.

Shiyamala Devi : Respondent/Petitioner

Prayer:- This Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code to call for the records relating to the order, dated 30/12/2021 made in MC No.44 of 2019 on the file of the Chief Judicial Magistrate, Thanjavur @ Kumbakonam and set aside the same as illegal.

For Petitioner : Mrs.J.Padhamavathi Devi

For Respondent : No appearance

**ORDER**

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This criminal revision has been filed seeking to set aside the order, dated 30/12/2021 made in MC No.44 of 2019 on the file of the Chief Judicial Magistrate, Thanjavur @ Kumbakonam.

2.The facts in brief:-

The marriage between the parties took place, on 19/03/2018 as per their customary rites. After the marriage, they were living in Chennai. At that time, her sister-in-law also staying in the above said house and it was objected by the wife. During the joint living ill-treatment and harassment was made by the mother-in-law and the sister-in-law is also making trouble and she was not properly taken care by them also. The parents of the husband also insulted; ill-treated. So because of the above said continuous torture, she wanted to set up a separate house. That was also not supported by the husband and the in-laws. Later, they set up a separate house. But the behaviour of the husband completely changed. He was not taken care of the family and used to come to the house in the late light. The husband has also



3. That was resisted by the husband stating that he used to pick up quarrel even for trivial issue. After making quarrel to take a separate house. Because of compulsion only, they arranged a separate house



and also insisted upon buying a new house. She also threatened to divorce him. Because of the above said behaviour, his life became miserable.

4. During the enquiry, the petitioner did not appear. After cross examination of PW1 was over, the trial court adjourned the matter for the appearance of the parties. In spite of the adjournment, the petitioner did not appear and so, the evidence was closed, on 16/12/2021. After perusing the evidence on record, the trial court passed an order directing the petitioner/husband to pay Rs.10,000/- as monthly maintenance to the wife.

5. Challenging the above said order, this revision has been preferred by the husband on very many grounds.

6. The learned counsel appearing for the petitioner would straightaway rely upon the judgment of the Hon'ble Supreme court in the case of **Bhagwan Dutt Vs. Kamal Devi (AIR 1975 SUPREME COURT 83)** for the purpose of argument that the earning capacity of the wife is an important criteria for deciding the quantum of maintenance.



7.No doubt that the earning capacity is also a deciding factor. But here, as mentioned above in the trial court, after cross examining the wife, the petitioner did not appear and even not taken care to produce his statements of assets and liabilities, also not even stated his monthly income.

8.As has been stated in the counter, it appears that there was a small issue between the husband and wife, either over setting up of a separate house or new house. These things ought to have been sorted out amicably and in-spite of repeated compromise talk undertaken by the friends, it did not succeed. The reason for the above said failure is also not clear on record.

9.Now whatever it may be, separation is admitted. Divorce notice has also been sent. What happened after that is not clear on record. Here absolutely, there is no evidence on record to show that the respondent/wife though educated, is employed. Unless she is employed and earning money, she is entitled for being maintained by the husband. So that duty cannot be questioned.

10.So apart from that, it is also contended to the



liabilities. But it was not done. So it cannot be taken advantage. It is his own wrong. Accordingly, the trial court has awarded Rs.10,000/- as monthly maintenance to the wife. So considering the status of the parties, I am of the considered view that this cannot be considered to be excessive or luxurious in nature.

13.For the reasons stated above, this criminal is revision is liable to be dismissed and accordingly, it is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

14.After passing of this order, the learned counsel appearing for the petitioner would submit that still the matter is pending before the trial court. So a direction may be issued to the trial court to expedite the enquiry process.

15.It appears that by closing the evidence of the petitioner, the above said order has been passed by the trial court. Whether the petitioner has filed any petition before the trial court to reopen the case or not is also not clear on record. It has also been submitted



that he was regularly paying the above said maintenance amount. In the absence of any clear record to show that the petitioner has filed a petition to reopen the case, no direction can be issued. Accordingly, the request made by the learned counsel appearing for the petitioner is rejected.

02/01/2023

Index:Yes/No
Internet:Yes/No
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To,

The Chief Judicial Magistrate,
Thanjavur @ Kumbakonam.

G . ILANGO VAN , J



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