



Crl.RC.No.941 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

Crl.RC.No.941 of 2024

and

Crl.MP.No.7911 of 2024

N.Unnikrishnan

...Petitioner

Vs.

1. Deepa Rajendiran

2. Naveen

...Respondents

Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. to set aside the order made in MC.No.348 of 2013 dated 25.11.2022 on the file of the V Additional Principal Family Court, Chennai.

For Petitioner : Ms.Thenmozhi Shivaperumal

ORDER

This Criminal Revision Case has been filed seeking quashment of the order made in MC.No.348 of 2013 dated 25.11.2022 on the file of the



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V Additional Principal Family Court, Chennai.

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2. The case of the petitioner is that, the marriage between the petitioner/husband and the 1st respondent/wife was solemnised on 27.11.2002 and out of their wedlock, the 2nd respondent was born. While so, due to some matrimonial dispute, they got separated. In such circumstances, alleging that the petitioner refused to maintain the respondents, the respondents filed a maintenance case under Section 125 of Cr.P.C. in M.C.No.348 of 2013 claiming a monthly maintenance of Rs.35,000/- to the 1st respondent and Rs.40,000/- to the 2nd respondent. In the mean time, the petitioner had filed a divorce petition in HMOP.No.1343 of 2014 and at the request of the petitioner, both the matters were clubbed together and the trial court, after adjudication, vide order dated 25.11.2022, though allowed the divorce petition filed by the petitioner/husband on the ground of cruelty, however, ordered for a monthly maintenance of Rs.25,000/- in favour of the 1st respondent/wife and Rs.30,000/- in favour of the 2nd respondent/child payable by the petitioner/husband. Aggrieved by the same, the petitioner has come up with this revision.



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3. Learned counsel for the petitioner submitted that, the divorce petition in HMOP.No.1343 of 2014 was allowed by the trial court on the ground of cruelty, in such circumstances, it is very much clear that the 1st respondent/wife will not be eligible to receive any maintenance from the petitioner/husband. While so, the trial court had mechanically ordered for a monthly maintenance of Rs.25,000/-, which is wholly unsustainable and the same was awarded by the trial court without considering the financial capacity of the petitioner/husband. Further, it is the 1st respondent who left the matrimonial house. Learned counsel further submitted that, initially the trial court ordered for a total interim maintenance of Rs.40,000/- and the same was subsequently enhanced to Rs.45,000/- and the total arrears payable by the petitioner comes to around Rs.63,00,000/-, in which, the petitioner had already paid a sum of Rs.54,00,000/-. However, the trial court without considering the said fact and without deducting the above said Rs.54,00,000/- paid by the petitioner, vide impugned order, directed the petitioner to pay a monthly maintenance of Rs.25,000/- & Rs.30,000/- to the respective respondents



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and directed the petitioner to pay the arrears at the above said rate, which is wholly unsustainable. She further more submitted that, the petitioner is ready to pay the balance amount of Rs.9,00,000/- as ordered by the trial court and sought for direction of this Court granting time to the petitioner to pay the same by way of nine installments.

4. There is no dispute about the marriage between the petitioner and the 1st respondent. The 1st respondent is the wife and out of their wedlock, they were blessed with the 2nd respondent. It is to be pointed out that it is the duty of the husband to maintain his wife and child and the comforts, which were available to the spouse and child should not be lost due to the friction between the warring parties. Only to that end, Section 125 Cr.P.C. was brought into the statute. In such a backdrop, it becomes the duty of the husband to maintain his wife and child.

5. The major grievance of the petitioner is that, when the divorce petition filed by the petitioner/husband is allowed on the ground of cruelty, directing the petitioner/husband to pay maintenance to the 1st



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respondent/wife is not sustainable that too ordering for a monthly maintenance of Rs.25,000/- in favour of the 1st respondent/wife is wholly unsustainable.

6. The grounds on which maintenance can be rejected to the wife can be only on the ground that wife is able to maintain herself and she has the requisite means to maintain herself and that she is living in adultery and where the person, who offers to maintain his wife on condition of her living with him and she refuses to live with him, only on such of those grounds, maintenance could be negatived against the wife.

7. In the case on hand, it is not the case of the petitioner/husband that his wife has sufficient means to maintain herself by her earnings or that she is living in adultery or that he is ready to maintain her if she comes and lives with him, but that, his wife is refusing to unite with him. There is no specific plea on the aforesaid three fronts and, therefore, necessarily the wife is entitled to maintenance u/s. 125 Cr.P.C. Merely because the divorce has been granted on the ground of cruelty would not be a ground to deny maintenance to the wife. The court below,



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appreciating the above in proper perspective, has granted maintenance, in which, this Court does not find any fault with and thereby, this court is not inclined to interfere with the same.

8. In view of the stand taken by the learned counsel for the petitioner that, the petitioner is ready to pay the balance arrears of maintenance and only sought for time to pay the same by way of installments this Court is inclined to pass directions permitting the petitioner to pay the balance arrears of maintenance in installments.

9. For the reasons aforesaid, this Court is inclined to issue the following directions:-

(i) The petitioner is directed to file a calculation memo before the trial court and upon filing of such memo, the trial court after affording sufficient opportunity to the parties, shall arrive at the total arrears payable by the petitioner and shall direct the petitioner to pay the balance of arrears of maintenance by way of seven installments;

(ii) The petitioner shall continue to pay the maintenance as ordered by the trial court in favour of the respondents on or



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before the 7th day of every English Calendar month;

(iii) Insofar as the 2nd respondent is concerned, the petitioner shall pay the maintenance only till the 2nd respondent attains majority. If the 2nd respondent had already attained majority, the petitioner would not be liable to pay any maintenance from the date of attainment of majority by the 2nd respondent;

(iv) Further, it is made clear that, the amount paid by the petitioner in favour of the respondents till date by way of interim maintenance shall be deducted from the total arrears of maintenance payable by the petitioner in favour of the respondents from the date of maintenance petition till date in favour of the 1st respondent and till the 2nd respondent attains majority, infavour of the 2nd respondent, while calculating the total arrears amount payable by the petitioner.

10. With the above observations and directions, this Criminal Revision Case stands disposed of accordingly. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No



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Speaking order : Yes/No
NCC : Yes/No

M.DHANDAPANI, J.

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To

The V Additional Principal Family Court,
Chennai.

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