



Crl.RC.No.231 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.04.2024

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

Crl.RC.No.231 of 2022

Nithya

...Petitioner

Vs.

Sakthivel

...Respondent

Petition filed under Section 397 r/w 401 of Code of Criminal Procedure to set aside the order, dated 11.11.2021, passed in C.A.No.43 of 2021 by the learned Principal Sessions Judge at Tiruppur.

For Petitioner : M/s.S.Sithirai Anandam

For Respondent : Mr.K.Tovi Ganesan

ORDER

This Criminal Revision Petition has been filed by the petitioner seeking to set aside the order, dated 11.11.2021, passed in C.A.No.43 of



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2021 by the learned Principal Sessions Judge at Tiruppur.

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2. The case of the petitioner is that the marriage between the petitioner / wife and the respondent / husband was solemnized on 26.06.2015. Due to some difference of opinion, the petitioner came out from the matrimonial house and filed a petition seeking divorce in H.M.O.P.No.20 of 2019 on the file of Sub Court, Palladam, however, the same is decreed in her favour on 04.02.2021. Thereafter, she filed a domestic violence case u/s.12 of the Domestic Violence Act D.V.A.No.1 of 2020 against the respondent and in the meantime she filed an interim maintenance petition in C.M.P.No.825 of 2020 in D.V.A.No.1 of 2020 seeking grant of interim maintenance in a sum of Rs.20,000/- per month. The Trial Court after adjudication, was pleased to dismiss the same vide order dated 26.03.2021 on the ground that the said petition is barred by limitation and held that no case has been made out by the petitioner to grant interim maintenance to her. Aggrieved over the same, the petitioner preferred an appeal seeking the very same relief in C.A.No.43 of 2021 on the file of learned Principal Sessions Judge, Tiruppur. After contest, the



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learned Judge dismissed the said appeal vide judgment dated 11.11.2021 by confirming the order of the trial Court. Feeling aggrieved over the same, the petitioner is in this Criminal Revision petition.

3. Learned counsel for the petitioner submitted that though the maintenance case has been filed by the petitioner, however, the trial Court has held that it has been filed beyond a period of one year which is beyond the period of limitation, however, it is the duty of the husband to maintain his wife. The trial Court without considering the said facts, has mechanically dismissed the said petition, which is wholly, unsustainable. Accordingly, he prayed for allowing this petition.

4. Learned counsel for the respondent submitted that in order to harass the respondent, the petitioner repeatedly filed the above petitions and all those facts were considered by the trial Court and the same was also confirmed by the lower appellate Court, which does not warrant any interference of this Court. Accordingly, he prayed for dismissal of this petition.



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6. There is no dispute about the marriage between the petitioner and her husband. The respondent is the husband of the petitioner and the second petitioner is the child of the first petitioner. The trial Court, on the basis of the decision of this Court in ***Lakshmi Narayanan Vs. Kamatchi (Crl.O.P.No.28924 of 2018 and Crl.M.P.No.16897 of 2018)*** & other similar matters has given a finding with regard to limitation u/s.12 of the Domestic Violence Act, 2005 for getting the fact that it is the duty of the husband to maintain his wife which is the basis on which Section 125 Cr.P.C. was brought into the statute. The duty of the husband cannot be sub-served by taking recourse to limitation u/s.12 of the Domestic Violence Act, 2005. In such a backdrop, when it is the duty the duty of the husband to maintain his wife, necessarily, the question of maintenance to the wife ought to have been considered by the Court below and failure to do the same necessarily this Court has to interfere with the said order.



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7. Considering the facts and circumstances of the case and considering the present cost of living, this Court is inclined to fix a sum of Rs.10,000/- per month as maintenance to the petitioner to be payable by the respondent. Accordingly, the Judgment passed by the learned Session Judge, Tiruppur is set aside and the present petition is allowed in the following terms:

(i) The respondent is directed to pay the arrears of maintenance amount at the rate of 10,000/- per month to the petitioner from the date of the order passed in C.M.P.No.825 of 2020 in D.V.A.No.1 of 2020 within a period of eight (8) weeks from the date of receipt of a copy of this order.

(ii) The respondent shall continue to pay the maintenance amount at the rate of Rs.10,000/- per month to the petitioner on or before 5th of every English Calendar month.

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

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M.DHANDAPANI, J.

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To

The Principal Sessions Court,
Tiruppur

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