



CrI.R.C.No.944 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No. 944 of 2023
and
CrI.M.P.No.18413 of 2023

E.Nithiyanandh
S/o.Elumalai

... Petitioner

Vs.

1. K.M.Vishnupriya
2. Sai Harshavardhini (minor)
Rep.by Guardian and Mother
Mrs.K.M.Vishnupriya

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 - 401 Cr.P.C, to call for the records relating to the order dated 20.10.2022 passed in M.C.No.489 of 2019 on the file of the IV Additional Family Court, Chennai (IV Additional Principal Judge) and set aside the same and allow the Criminal Revision as prayed for.

For Petitioner : Mr. Swami Subramanian

For Respondents : Mr.S.Srinivasan



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ORDER

This Criminal Revision Petition is filed to set aside the order dated 20.10.2022 in M.C.No.489 of 2019 on the file of the IV Additional Principal Family Court, Chennai.

2. The petitioner herein/respondent in M.C.No.489 of 2019 has filed the present revision challenging the order dated 20.10.2022 passed by the learned IV Additional Principal Judge, Family Court, Chennai, granting maintenance per month to the tune of Rs.50,000/- i.e., Rs.40,000/- to the first respondent/wife and Rs.10,000/- to the second respondent/minor daughter.

3. The contention of the petitioner is that the first respondent had voluntarily deserted her matrimonial home to have a life of her own choice. Hence, the petitioner-husband has filed the divorce petition in H.M.O.P.No.969 of 2016 for dissolution of marriage on the ground of



cruelty, which was dismissed for default on 21.09.2021. He has also filed I.A.No.2229 of 2027 seeking to conduct DNA test to the second respondent, which was allowed on 15.03.2018. Aggrieved by the same, the respondents herein filed a revision petition before this Court in CRP(PD).No.1634 of 2018, which came to be dismissed on 13.06.2018, after hearing the caveator. Thereafter, the said CRP was restored and this Court, by order dated 03.04.2019, set aside order in I.A.No.2229 of 2017 and allowed CRP(PD) No.1634 of 2018. Challenging the same, the petitioner/husband has filed Special Leave Petition (Civil) Diary No.33514 of 2019 before the Hon'ble Supreme Court, which came to be dismissed on 04.10.2019. Thereafter, the petitioner had filed H.M.O.P.No.3116 of 2022 on the ground of adultery and cruelty, in which the petitioner had filed I.A.No.4 of 2024 seeking to conduct DNA test to prove the paternity of the child (second respondent herein).

4. On the other hand, the respondents herein had filed a maintenance case in M.C.No.489 of 2019 and obtained an order on 20.10.2022 and the petitioner was not allowed to contest the maintenance case and that the trial Court, finding that even though sufficient chances were given, the petitioner-



husband had not filed the assets and liabilities statement, by following the directions of the Hon'ble Apex Court in ***Rajnesh Vs. Neha and another (2021) 2 SCC 324***, and hence, it was found by the Court below in the said maintenance that the petitioner was not inclined to comply with the Supreme Court's directions and struck out the case of the petitioner and ordered the maintenance case.

5. The learned counsel for the petitioner submitted that for non-filing of the assets and liabilities statement, the entire pleadings of the petitioner by way of counter, cannot be struck out at one stroke and the petitioner's contention ought to have been considered and thereafter appropriate orders could have been passed and hence, the order passed in the said M.C.No.489 of 2019, is not proper. He further submitted that at the time of admission of the above revision, as per the undertaking given by the petitioner/husband, this Court directed the petitioner to deposit 50% of the arrears of maintenance amount to the credit of M.C.No.489 of 2019 and also the petitioner shall continue to pay 50% of the monthly maintenance awarded by the trial Court to the respondents herein.



6. In pursuant to the same, the petitioner had initially deposited a sum of Rs.3,00,000/- on 07.06.2023 and another sum of Rs.3,00,000/- on 12.02.2023 and further sum of Rs.3.75 lakhs on 14.08.2024 and hence, the petitioner-husband has totally paid a sum of Rs.9.75 lakhs to the respondents. Hence, the learned counsel for the petitioner sought for setting aside the impugned order and remanding the case back to the trial Court and also to direct the Family Court to give an opportunity to the petitioner to file his assets and liabilities statement and thereafter, the Family Court shall hear the petitioner and pass appropriate orders.

7. The learned counsel for the petitioner-husband further contented and prayed that the maintenance already ordered for the first respondent-wife may be set aside, as the first respondent has sufficient means and earning by running a partnership firm.

8. Learned counsel for the respondents herein, on the other hand, while opposing the contentions of the petitioner-husband, stated that the allegation regarding adulterous life of the wife is without any materials and



earlier, the petitioner filed a petition before the Family Court in H.M.O.P.No.3116 of 2022 and also he had filed I.A.No.4 of 2024, which was dismissed on 30.09.2024. He further submitted that petitioner's calculation and projection of payment of maintenance, is not proper. The petitioner had paid a sum of Rs.3 lakhs on 07.06.2023 and another sum of Rs.3 lakhs on 12.02.2023 and also paid a sum of Rs.3.75 lakhs on 14.08.2024 as per order passed by this Court on 07.06.2023 and also paid Rs.25,000/- for the subsequent month and as on date, the petitioner-husband has to pay Rs.22,50,000/ and 50% of the said amount is Rs.11,25,000/- and as on date, the husband has to pay Rs.5.25 lakhs. The learned counsel for the petitioner undertakes that the petitioner/husband will pay a sum of Rs.5.25 lakhs. The petitioner submits that there is an error in calculation and now, he is ready to pay Rs.3 lakhs within a period of two weeks from today and the impugned order may be set aside, and thereafter he would approach the Family Court and file the assets and liabilities statement and as per the direction of the Family Court, he would start paying maintenance amount to the respondents as per the direction of the Family Court, Chennai.



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9. Considering the above submissions, and also taking into account that the petitioner/husband had already paid a sum of Rs.9.75 lakhs towards arrears, the petitioner has to pay another sum of Rs.3 lakhs within a period of two weeks from today and shall continue to pay 50% of the maintenance amount as ordered by the Family Court in M.C.No.489 of 2019 on 20.10.2022 till the disposal of maintenance case and thereafter, he shall file assets and liabilities statement before the Court below. In view of the same and also the undertaking given, this Court set asides the impugned order dated 20.10.2022 passed in M.C.No.489 of 2019 and the petitioner shall continue to pay the maintenance amount as directed above. In the event of failure of any of the aforementioned conditions, this revision petition would stand automatically dismissed without further reference to this Court.

10. With the above observations and directions, this revision petition is allowed. Consequently, connected miscellaneous petition is closed.

18.10.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

The IV Additional Principal Judge,
Family Court,
Chennai.