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Crl.RC.No.1684 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM:

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

Crl.RC.No.1684 of 2023

and

Crl.MP.No.15987 of 2023

A.Manohar

...Petitioner

Vs.

1. Geeta Lakshmi

2. Minor M.Mithun

(Represented by Mother and

Natural Guardian, Mrs.Geetha Lakshmi)

...Respondents

Petition filed under Section 397 and 401 of Cr.P.C. to call for the records in MC.No.59 of 2019 dated 12.09.2022 on the file of the VI Additional Principal Family Court at Chennai and set aside the same.

For Petitioner : Mr.A.Manohar (Party – in – Person)

For Respondents : Mr.C.Prakasam

ORDER

This Criminal Revision case has been filed to set aside the order passed by the VI Additional Principal Family Court at Chennai in MC.No.59 of 2019 dated 12.09.2022.



2. The case of the petitioner is that, the marriage between the petitioner/husband and the 1st respondent/wife was solemnized on 07.05.1999 and out of the wedlock they were blessed with two male children namely Rahul and Mithun, the 2nd respondent herein. While so, due to some misunderstanding, they got separated. In such circumstances, alleging that the petitioner failed to maintain the respondents, they filed a maintenance case under Section 125 of Cr.P.C. in MC.No.59 of 2019 on the file of the VI Additional Principal Family Court, Chennai, claiming a monthly maintenance amount of Rs.25,000/- in favour of the 1st respondent and Rs.15,000/- in favour of the 2nd respondent. After adjudication, the trial Court, vide order dated 12.09.2022, awarded a monthly maintenance of Rs.5,000/- to each of the respondents from the date of petition till 12.09.2022 and Rs.13,000/- to each of the respondents thereafter. Aggrieved with the same, the petitioner/husband has come up with the present revision.

3. The petitioner/Party – in – Person submitted that, admittedly at the relevant point of time, the petitioner was working in China, however, subsequently, he resigned his job on 17.09.2018 and currently he is



unemployed and he is completely relying upon the rental income which amount to Rs.50,000/- and using the said income, the petitioner has to take care of himself and his age old parents. While so, without considering the financial capacity of the petitioner, the trial court had ordered for a payment of Rs.26,000/- towards monthly maintenance in favour of the respondents, which is more than 50% of the income received by the petitioner, which is wholly erroneous. He further submitted that, the respondents are residing in the petitioner's property which would easily fetch around Rs.50,000/- rent. Further, the 1st respondent is living in adultery and thereby, the petitioner filed a divorce petition in OP.No.4539 of 2018 and the same is pending and therefore, the 1st respondent is not entitled to receive any maintenance at the hands of the petitioner. However, without considering any of the said facts, the trial court had awarded a monthly maintenance of Rs.13,000/- to each of the respondents which is wholly unsustainable. Accordingly, he prayed for appropriate orders.

4. Learned counsel for the respondents submitted that, the trial court upon careful perusal of the documents placed before it and after taking into



consideration the assets and liability and monthly income of the petitioner and also considering the fact that after separation, the children are under the care and custody of the respondent/wife, had passed the present impugned order awarding a total monthly maintenance of Rs.26,000/- and the same does not require any reduction. Accordingly, he prayed for dismissal of this petition.

5. Heard the petitioner/party-in-person and the learned counsel for the respondents and perused the material documents placed on record.

6. There is no dispute about the marriage between the petitioner and the respondent. The 1st respondent is the wife and out of their wedlock, they were blessed with the two sons, including the 2nd respondent herein. 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.



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7. 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.

8. 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 he is ready to maintain her if she comes and lives with him, but that, his wife is refusing to unite with him. Though it is the claim of the petitioner that the 1st respondent/wife is living in adultery, in order to prove the same, no documentary evidence has been produced by the petitioner either before this Court or before the trial court and therefore, in the absence of any proof, the said contention of the petitioner cannot be acceded to.

9. It is equally not in dispute that the petitioner resigned his job in China in the year 2018. When it is the specific case of the husband that he is



unemployed and the only source of income for him is the rental income to the tune of about Rs.50,000/-, using which he has to take care of himself and his age old parents, directing the petitioner to pay more than 50% of his income towards monthly maintenance of the respondents would be unjust and therefore, in the interest of either parties, this Court is of the considered view that the monthly maintenance requires to be reduced.

10. For the reasons aforesaid, this Court is inclined to modify the monthly maintenance awarded by the trial court in favour of the respondents in the following terms :-

(i) the petitioner is directed to pay a sum of Rs.5,000/- as monthly maintenance in favour of each of the respondents from the date of maintenance petition till 12.09.2022. Thereafter, the petitioner shall pay a monthly maintenance of Rs.10,000/- to each of the respondents and shall continue to pay the said amount on or before the 7th day of every English Calendar month to the respondents;

(ii) the petitioner is directed to pay the arrears of maintenance amount at the rate of Rs.5,000/- from the date of maintenance petition till 12.09.2022 and thereafter, the petitioner shall pay the balance arrears of maintenance at the



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rate of Rs.10,000/- as ordered by this court, less than the amount if any already paid, to the respondents within a period of four weeks from the date of receipt of a copy of this order.

(iii) Further, the petitioner is at liberty to file appropriate modification petition before the trial court if the divorce petition filed by him is allowed on the ground of adultery.

11. With the above direction and modification, this Criminal Revision Case stands disposed of. Consequently, the connected miscellaneous petition is closed.

30.07.2024

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

To

The VI Additional Principal Family Court,
Chennai.



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M.DHANDAPANI, J.

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