



Crl.RC.No.933 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM:

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

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and

Crl.MP.No.7897 of 2024

Jayaprakash

...Petitioner

Vs.

1. Minor Pragadeeswar
Minor represented by friend/guardian
2nd respondent mother Elavarasi

2. Elavarasi

...Respondents

Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C., 1973 to set aside the order in MC.No.3 of 2020 dated 20.11.2023 on the file of the Family Court, Dharmapuri.

For Petitioner : Mr.Avinash Wadhwani

For Respondents : Mr.P.Mani



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ORDER

This Criminal Revision Case has been filed seeking quashment of the order made in MC.No.3 of 2020 dated 20.11.2023 on the file of the Family Court, Dharmapuri.

2. The case of the petitioner is that, the marriage between the petitioner/husband and the 2nd respondent/wife was solemnised on 01.06.2017 as per Hindu Rites and Customs and out of their wedlock, the 1st 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.3 of 2020 claiming a monthly maintenance of Rs.25,000/- to the 1st respondent and Rs.75,000/- to the 2nd respondent. After adjudication, the trial court, vide impugned order dated 20.11.2023, ordered for a monthly maintenance of Rs.20,000/- to each of the respondents 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, though the petitioner filed a restitution of conjugal rights petition in OP.No.126 of 2019 before the Sub Court, Cheyyar, it is the 2nd respondent who refused to live with the petitioner and only upon receipt of summons in the above said OP, the 2nd respondent, in order to wreck vengeance, filed the maintenance case. He further submitted that, the 2nd respondent is running an Optical and Ophthalmology clinic and is earning a monthly income of Rs.50,000/- which is sufficient for her to maintain herself. However, without considering any of the above said facts and without considering the financial capacity of the petitioner, the trial court had mechanically ordered for a monthly maintenance of Rs.20,000/- in favour of the 2nd respondent/wife, which is wholly unsustainable. However, the learned counsel for the petitioner fairly submitted that, the petitioner is ready to pay the maintenance as ordered by the trial court in favour of the 1st respondent. Accordingly, he prayed for appropriate orders.

4. Learned counsel appearing for the respondents submitted that, at the instance of the 2nd respondent, the restitution of conjugal rights



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petition filed by the petitioner/husband in OP.No.126 of 2019 before the Sub Court, Cheyyar was subsequently transferred to the Family Court, Dharmapuri and the same is pending. He further submitted that, the trial court after careful consideration of the documents placed before it and after taking into consideration the assets and liability and monthly income of the petitioner had passed the present impugned order awarding a monthly maintenance of Rs.20,000/- each in favour of the respondents and the same does not require any modification. Accordingly, he prayed for dismissal of this petition.

5. Heard learned counsel on either side and perused the material documents placed on record.

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



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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.

7. Admittedly, the petitioner/husband filed a restitution of conjugal rights petition in OP.No.126 of 2019 before the Sub Court, Cheyyar and similarly the respondents have filed a Maintenance case in MC.No.3 of 2020 on the file of the Family Court, Dharmapuri and the trial court without clubbing both the matter together, had disposed of the maintenance case filed by the respondents in MC.No.3 of 2020, vide impugned order dated 20.11.2023 and ordered for a monthly maintenance of Rs.20,000/- to each of the respondents payable by the petitioner, pending disposal of the restitution of conjugal rights petition.

8. Though it is the claim of the petitioner that the 2nd respondent is running an opticals and ophthalmology clinic and is earning a sum of Rs.50,000/- per month and, therefore, she can maintain herself and without considering the same, the court below has ordered the



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maintenance by deciding the main case, however, the said contention of the petitioner cannot be sustained, since no material document has been produced by the petitioner to show the earnings of the 2nd respondent. Further, the court below had not clubbed both the cases together, viz., the maintenance case and the restitution of conjugal rights petition and decided the same. Therefore at best the maintenance granted now could only be held to be interim maintenance. Insofar as grant of interim maintenance is concerned, it is the duty of the husband to maintain his wife and children. However, this Court also cannot lose sight of the fact that the petitioner had filed the petition for restitution of conjugal rights which shows that he was ready and willing to live with his wife.

9. In such circumstances, this Court deems it fit to fix the monthly maintenance payable in favour of the 2nd respondent/wife at Rs.15,000/-. Therefore, the maintenance awarded by the trial court in favour of the respondents is modified to one of interim maintenance and this Court is inclined to dispose of this revision in the following terms:



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(i) The maintenance ordered by the trial court, vide impugned order is modified as interim maintenance and the matter is remanded to the trial court for final disposal.

(ii) The petitioner is directed to pay an interim monthly maintenance of Rs.20,000/- in favour of the 1st respondent and Rs.15,000/- in favour of the 2nd respondent and shall pay the entire arrears of maintenance at the above said rate to the respondents within a period of eight weeks from the date of receipt of a copy of this order;

(iii) The petitioner shall continue to pay the interim maintenance as ordered by this court in favour of the respondents on or before the 7th day of every English Calendar month;

(iv) The trial court is directed to club the maintenance case in MC.No.3 of 2020 and restitution of conjugal rights petition in OP.No.126 of 2019 together and pass a common order within a period of five months from the date of receipt of necessary proof from the petitioner with regard to payment of arrears of maintenance fixed by this court, after affording sufficient opportunity to the parties. If the restitution of conjugal rights petition in OP.No.126 of 2019



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filed by the petitioner/husband before the Sub Court, Cheyyar is not transferred to the Family Court, Dharmapuri, the same may be withdrawn from the file of Sub Court, Cheyyar and may to transferred to the Family Court, Dharmapuri.

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

10.06.2024

skt

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

To

The Family Court,
Dharmapuri.



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M.DHANDAPANI, J.

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