



Crl.RC.No.641 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2024

CORAM:

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

Crl.RC.No.641 of 2024
and Crl.M.P.No.6039 of 2024

1.Sai Suganthan (minor)

Rep by his mother and natural Guradian S.Durgadevi

2. S.Durgadevi

...Petitioners

Vs.

Pari & Parivallal

...Respondent

Petition filed under Section 397 r/w 401 of Code of Criminal Procedure to call for the records pertaining to M.C.No.79 of 2021 on the file of the principal family court, Chennai and by setting aside the order dated 29.02.2024 in M.P.No.1035 of 2023 in M.C.No.79/2021 that has allowed the petition filed by the respondent and therefore pass orders consequently, directing the respondent to pay a sum of Rs.15,000/- as maintenance per month to the petitioners along with the amount accrued as arrears from the date filed the said maintenance petition.

For Petitioner : Mr.Diwakar
for Mr.A.Jotheeswaran



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ORDER

This Criminal Revision Case has been filed seeking to set aside order passed in M.P.No.1035/2023 in M.C.No.79/2021.

2. The petitioners herein are the son and the second petitioner is the wife of the respondent/husband. It is the case of the revision petitioners that initially, the second petitioner/wife filed a petition under Section 125 of Cr.P.C in M.C.No.79 of 2021 on the file of the Principal Family Court Judge, Chennai claiming monthly maintenance of Rs.15,000/- from the respondent, wherein, the trial court has passed an ex-parte order dated 29.08.2022 directing the respondent to pay a sum of Rs.5500/- towards maintenance to the petitioners. Subsequently, a petition under Section 125(3) of Cr.P.C was filed by the petitioner seeking payment of arrears of maintenance by the respondent in M.P.No.604/2023 which was allowed. While so, the respondent had filed a petition under Section 126(2) of Cr.P.C in M.P.No.1035/2023 seeking to set aside the ex-parte order passed by the trial court in M.P.No.79/2021 which was allowed upon condition of payment of Rs.2,000/- by the respondent to the petitioners vide order dated



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30.01.2024 on condition that the respondent shall pay a sum of Rs.2,000/-

to the petitioners on or before 12.02.2024, pursuant to which, the respondent filed a memo dated 14.02.2024 stating that though the respondent/husband was ready and willing to pay the amount as ordered by the trial court in M.P.No.1035/2023, however, the petitioner had refused to receive the same. Recording the above said memo, the trial court vide order dated 29.02.2024 held that the respondent was ready to pay the said amount despite the petitioner having refused to receive the same and thereby directed him to pay the amount on or before 08.03.2024 and further held that if the petitioner refuses to receive the amount, the respondent shall pay the amount to the legal aid on the same day. Challenging the same, the present revision has been filed.

3. Learned counsel for the petitioner submitted that the ex-parte order came to be passed only when the respondent inspite of repeated notices did not appear before the Court. The Court below had considered all the circumstances and had granted interim maintenance to the petitioners herein and the respondent after a lapse of two years had filed the petitioner



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seeking to set aside the ex-parte order which clearly shows that the respondent is only inclined to drag on the proceedings. The order passed by the court below is wholly arbitrary and perverse and the same deserves to be set aside.

4. This Court heard the learned counsel appearing for the petitioners and perused the materials available on record.

5. Since no adverse order is being passed against the respondent, notice to the respondent is dispensed with.

6. The facts in the present case are not in dispute. Initially interim maintenance at Rs.5,500/- per month was ordered and, thereafter, the wife filed the petition seeking arrears of maintenance to be paid, which has also been ordered. The said petition was filed in the year 2021, however, the petition to set aside the same was filed in the year 2023, which was ordered on payment of Rs.2,000/- to the wife, which the wife had refrained to receive warranting the court below to order the said payment to



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the legal aid by allowing the said petition, which is put in issue before this Court.

7. Though it is mainly contended on behalf of the wife that the petition is only to drag on the maintenance proceedings as the petition had been filed with a delay of about two years, however, it should not be lost sight of that in matrimonial cases, leverage should be given to either side so that the friction is settled and the warring parties lead a peaceful life.

8. When this point was highlighted to the learned counsel for the petitioner, learned counsel appearing for the petitioner fairly submitted that this Court, without going into the merits of the case may direct the trial court to dispose of the main M.c.No.79/2021 itself within a specified time frame, which would give a quietus to the issue.

9. Considering the faid stand taken by the learned counsel for the petitioner, this Court without going into the merits of the case and without interfering with the order impugned, is inclined to issue a direction to the



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trial court to dispose of the main case in M.P.No.79/2021 within a period of three months from the date of receipt of a copy of this order after affording an opportunity to the respondent.

10. Accordingly, the Criminal Revision petition is disposed of. Consequently, the connected Miscellaneous Petition is closed.

04.04.2024

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

To

The Principal Family Court Judge,
Chennai



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M.DHANDAPANI, J.

NHS

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