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Crl.R.C.No.645 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

CORAM:

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

Crl.R.C.No.645 of 2024

and

Crl.M.P.No.6111 of 2024

A.Aslam Basha

...Petitioner

Vs.

H.Mubarak

...Respondent

Petition filed under Section 397 r/w 401 of Code of Criminal Procedure to call for the entire records in pursuant to the Crl.M.P.No.1735 of 2023 in M.C.No.02 of 2023 on the file of the District Munsif Cum Judicial Magistrate, Arcot, Vellore District vide order dated on 03-02-2024 and set-aside the same.

For Petitioner : Mr.M.Sathish Kumar

ORDER

This Criminal Revision Case has been filed as against the order dated 03.02.2024 made in Crl.M.P.No.1735 of 2023 in M.C.No.02 of 2023 by the District Munsif Cum Judicial Magistrate, Arcot, Vellore District.

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2. It is the case of the petitioner that the marriage between the petitioner/husband and the first respondent/wife was solemnized on 04.12.2016 as per Muslim Rites and Customs. Out of the said wedlock, they were blessed with a son namely Ibrahim Basha who is now aged about 7 years. Due to a matrimonial dispute between the petitioner and the respondent, the petitioner/husband filed a petition for Restitution of Conjugal Rights however, the respondent/wife had refused to live with the petitioner. As a counter blast, the respondent/wife filed a petition under section 125 of Cr.P.C before the District Munsif cum Judicial Magistrate, Arcot, Vellore District claiming monthly maintenance and also filed C.M.P.No.1735/2023 seeking interim maintenance wherein, the trial court has passed an award directing the petitioner/husband to remit the entire school fees to the tune of Rs.19,640/- and continue to pay monthly maintenance to the tune of Rs.10,000/- on or before the 5th of every month. Challenging the same, the present revision has been filed.

3. Learned counsel for the petitioner would submit that the petitioner is ready to pay a sum of Rs.19,640/- towards the school fee of his



son as awarded by the trial court. He further submitted that the petitioner is running a petty mobile recharge shop on rental basis and is earning only a sum of Rs.200 to 250 per day. However, the interim maintenance awarded by the trial court to the tune of Rs.10,000/- is highly excessive and the petitioner has no sufficient income to comply with the said direction.

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

5. There is no dispute with regard to the marriage between the petitioner/husband and the respondent/wife. The main contention of the petitioner is that he does not have sufficient income to pay interim maintenance and that a sum of Rs.10,000/- awarded by the trial court towards interim maintenance is highly excessive. However, this Court is of the view that the said amount may not be sufficient for the respondent to maintain herself and the child taking into consideration the cost of living in the present scenario.



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6. However, 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 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.

7. Though the petitioner claims his income to be only a sum of Rs.200/- to Rs.250/- per day, however, no material has been placed by him with regard to his income and occupation. In such circumstances, this Court is of the view that the Trial Court, based on the oral and documentary evidence has rightly awarded a sum of Rs.10,000/- per month towards maintenance to be paid by the petitioner which cannot be said to be exorbitant and that the respondent being the wife of the petitioner, he is duty bound to maintain his wife. Hence, the award passed by the Trial Court cannot be interfered with and this Court finds no merit in entertaining the present revision and the same deserves to be dismissed.



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8. Accordingly, the Criminal Revision petition is dismissed confirming the award passed by the District Munsif Cum Judicial Magistrate, Arcot, Vellore District in Crl.M.P.No.1735 of 2023 in M.C.No.02 of 2023.

04.04.2024

NHS

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

To

The District Munsif Cum Judicial Magistrate,
Arcot, Vellore District.



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M.DHANDAPANI, J.

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