



Crl.RC.No.740 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2024

CORAM:

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

Crl.RC.No.740 of 2023

and

Crl.MP.No.5764 of 2023

Shivaji

...Petitioner

Vs.

1. Saradha

2. Mukesh

...Respondents

Petition filed under Section 397 r/w 401 of Code of Criminal Procedure against the order Cr.MP.No.106 of 2020 in M.C.No.70 of 2017 dated 23.02.2023 on the file of the Learned Family Court, Dharmapuri.

For Petitioner : Mr.B.Gopalakrishnan

For Respondents : Mr.A.Arun

ORDER

This Criminal Revision case has been filed to set aside the order of the Family Court, Dharmapuri made in Cr.MP.No.106 of 2020 in M.C.No.70 of 2017 dated 23.02.2023. The learned Judge has ordered for a monthly



Ctrl.RC.No.740 of 2023

maintenance of Rs.10,000/- each to the wife and son, the respondents herein.

2. The case of the petitioner is that, the marriage between the petitioner/husband and the 1st respondent/wife was solemnized on 05.02.1992 and out of their wedlock, they were blessed with two female children and one male child/the 2nd respondent herein. While so, due to some misunderstanding, the petitioner and the 1st respondent got separated. Thereafter, the 1st respondent along with her second daughter and son/the 2nd respondent filed a maintenance case under Section 125 of Cr.P.C. in MC.No.70 of 2017 on the file of the Family Court, Dharmapuri, claiming monthly maintenance amount of Rs.25,000/- in favour of the 1st respondent and Rs.15,000/- each to the 2nd daughter and son. After adjudication, the trial Court, vide order dated 30.11.2018, awarded a sum of Rs.2,500/- per month to the 1st respondent/wife and Rs.3,500/- per month to the 2nd respondent/son and no maintenance was ordered in favour of the 2nd daughter since she got married and was living with her husband. Being not satisfied with the same, the respondents filed a petition under Section 127



CrI.RC.No.740 of 2023

Cr.P.C. seeking enhancement of the monthly maintenance awarded in their favour. The trial court, vide impugned order had ordered for monthly maintenance of Rs.10,000/- each to the respondents payable by the petitioner. Challenging the same, the petitioner had preferred this revision.

3. Learned counsel for the petitioner submitted that, admittedly the petitioner is the husband and the 1st respondent is the wife and out of their wedlock, they were blessed with two daughters and one son/the 2nd respondent. It is pertinent to note that, after their separation due to some matrimonial dispute, the two daughters were under the care and custody of the petitioner and the son is under the care and custody of the respondent and it is the petitioner who performed the marriage of his two daughters and unfortunately, one of his daughter was abandoned and she is living with the petitioner herein and the petitioner is working in Hatsun Agro Products Ltd., and is earning only a sum of Rs.30,000/- per month and it is impossible for him to take care of himself, his abandoned daughter and also his abandoned sister, after paying a lumpsum of Rs.20,000/- to the respondents, which is 2/3rd of his income and the monthly maintenance of Rs.10,000/- awarded by



the trial court to each of the respondent is highly excessive and the same was ordered by the trial court without taking into consideration the financial capacity of the petitioner. 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, had passed the present impugned order enhancing the maintenance awarded in favour of the respondents to Rs.10,000/- each and the same does not require any reduction. 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 1st respondent. The 1st respondent is the wife and out of their wedlock, they were blessed with the 2 female children and one male child/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.

7. It is equally not in dispute that initially a monthly maintenance of Rs.2,500/- to the 1st respondent and Rs.3,500/- to the 2nd respondent was awarded by the trial court in M.C.No.70/2017 dated 30.11.2018, which was subsequently enhanced to Rs.10,000/- each to the respondents, vide impugned order.

8. It is the major contention of the petitioner that he has to take care of himself, his sister and one of the daughter, who were deserted and his entire salary of Rs.30,000/- itself is not sufficient to meet their day to day needs, while so, ordering for a monthly maintenance of Rs.10,000/-each to the respondents payable by the petitioner is wholly unsustainable. Though it is claimed by the petitioner that his monthly salary is Rs.30,000/-, however, the trial court arrived at a conclusion that the monthly income of the petitioner is Rs.40,000/-. However, to come to the said finding, there is no



material which has been taken recourse to. Even otherwise, the income of the petitioner is Rs.40,000/-, which is not admitted, this Court feels that, directing the petitioner to pay half of his salary as maintenance in favour of the respondents is excessive, since it will be difficult for the petitioner to take care of himself, his daughter and his sister with the balance amount of Rs.20,000/-, which stand has not been disputed by the respondents. Further, it should not be lost sight of the fact that the petitioner has to save something for the rainy day as well and, therefore, the amount awarded as maintenance at Rs.20,000/- is grossly excessive and requires to be modified.

9. Hence, 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 the arrears of maintenance amount, at Rs.2,500/- and Rs.3,500/- as ordered by the trial court, less the amount, if any, already paid to the respondents within a period of six weeks from the date of receipt of a copy of this order from the date of filing of maintenance petition till the filing of petition for enhancement.

(ii) Thereafter, from the date of enhancement petition till



WEB COPY



Crl.RC.No.740 of 2023

date, the petitioner is directed to pay the arrears of maintenance amount, at Rs.8,000/- and Rs.6,000/- as ordered by this court.

(iii) The petitioner shall continue to pay the maintenance at Rs.8,000/- per month in favour of the 1st respondent/wife and a sum of Rs.6,000/- per month in favour of the 2nd respondent/son, as fixed by this Court on or before the 7th day of every English Calendar month

10. With the above direction and modification, this Criminal Revision Case stands allowed. Consequently, the connected miscellaneous petition is closed.

22.04.2024

skt

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

To

The Family Court,
Dharmapuri.

M.DHANDAPANI, J.

7/8



WEB COPY



Crl.RC.No.740 of 2023

skt

Crl.RC.No.740 of 2023
and
Crl.MP.No.5764 of 2023

22.04.2024