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Crl.RC.No.945 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

CORAM:

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

Crl.RC.No.945 of 2024

S.Murugan

...Petitioner

Vs.

1. Nilavazhagi

2. Minor M.Yogasri

Minor represented by her Mother and Natural Guardian

Nilavazhagi

...Respondents

Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 29.08.2022 passed in MC.No.611 of 2015 on the file of the learned IV Additional Family Court, Chennai.

For Petitioner : Mr.C.Karthik

For Respondents : Mr.M.Kamaraj

ORDER

This Criminal Revision Case has been filed seeking quashment of the order passed in MC.No.611 of 2015 dated 29.08.2022 on the file of the IV Additional Family Court, Chennai.



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2. The case of the petitioner is that, the marriage between the petitioner and the 1st respondent was solemnised on 29.11.2009 and out their wedlock, the 2nd respondent was born. While so, due to some matrimonial dispute, the petitioner and the 1st respondent got separated. In such circumstances, alleging that, the petitioner refused to maintain the respondents, the respondents filed a maintenance case in MC.No.611 of 2015 and the trial court, vide order dated 29.08.2022 ordered for a monthly maintenance of Rs.6,000/- to each of the respondent payable by the petitioner from the date of maintenance petition and further directed the petitioner to pay a sum of Rs.7,000/- per month to each of the respondents from January 2019. Aggrieved by the same, the petitioner has come up with this revision.

3. Learned counsel for the petitioner submitted that, the petitioner is working as a Water can supplier and his monthly income is only a sum of Rs.15,000/- and the maintenance has been fixed by the trial court without taking into consideration the financial capacity of the petitioner and the same is on the higher side and necessarily it requires to be



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modified. He further submitted that the petitioner had filed a divorce petition in O.P.No.602 of 2012 and the same was allowed, vide *ex parte* order dated 06.04.2013 on the ground of cruelty. While so, ordering for maintenance to the 1st respondent payable by the petitioner cannot be acceded to. Accordingly, he prayed for appropriate orders.

4. Per contra, learned counsel appearing for the respondents submitted that the petitioner is a Water can sales agent and not an supplier and his monthly income is more than Rs.50,000/-. While so, paying a sum of Rs.14,000/- per month towards maintenance of the respondents will not cause any damage to the petitioner and the court below, on proper appreciation of the oral and documentary materials has fixed the maintenance, which does not warrant any interference. Accordingly, he prayed for dismissal of this petition.

5. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.



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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 2nd 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 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. 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 negated 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



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that she is living in adultery 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.

There is no specific plea on the aforesaid three fronts and, therefore, necessarily the wife is entitled to maintenance u/s. 125 Cr.P.C. The court below, appreciating the above in proper perspective, has granted maintenance, in which, this Court does not find any fault with and thereby, this court is not inclined to interfere with the same.

9. Further, though this Court, vide order dated 10.06.2024 granted interim stay on condition that the petitioner shall pay the entire arrears of maintenance at Rs.5,000/- and Rs.7,000/- as fixed by this court within a period of two weeks from the date of receipt of a copy of this order, however, the same was not complied with by the petitioner.

10. In view of the above, the order of interim stay granted by this court on 10.06.2024 stands vacated and the petitioner is directed to pay the entire arrears of maintenance as ordered by the **trial court** to the respondents within a period of four weeks from the date of receipt of a



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copy of this order.

11. For the reasons aforesaid, this Criminal Revision Case stands
dismissed.

24.06.2024

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

To

The Family Court Judge,
Vellore.

M.DHANDAPANI, J.



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