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CrI.RC.No.1038 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**CrI.RC.No.1038 of 2024
and
CrI.M.P.No.8810 of 2024**

Sunil Kumar
S/o.Late Navarathamal

... Petitioner

Vs.

1. Mitha Jain @ Kavitha
W/o.Sunil Kumar

2. Sachi S.Jain
D/o.Sunil Kumar

3. Kajal
C/o.Mitha Jain
Represented by Guardian Mrs.Mitha Jain

... Respondents

PRAYER: Criminal Revision case filed under Section 397 & 401 of Cr.P.C. to set aside the order dated 27.10.2023 made in M.C.No.477 of 2018 on the file of the V Additional Family Judge, Chennai, wherein the learned Judge was directed to pay Rs.15,000/- to each of the respondents from 17.07.2018.

For Petitioner : Mr.Pramod Kumar Chopda



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for Mr.Ramesh Kumar G.Chopda

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For Respondents : Mr.G.Kalyan Jhabhak

ORDER

This criminal revision is filed against the order dated 27.10.2022 passed in M.C.No.477 of 2018 by the learned III Additional Family Court, Chennai.

2. The case of the petitioner is that the first respondent had married the petitioner during the subsistence of earlier marriages and from the wedlock, the second respondent, namely, Sachi S.Jain, aged about 7 years was born. The petitioner along with the respondents 1 to 3 (third respondent - Kajal born through the first husband of the first respondent) were living at Bangalore for three years and due to difference of opinion, they both separated. Following separation, the respondents filed M.C.No.477 of 2018 on the file of the V Additional Family Court, Chennai seeking interim maintenance of Rs.20,000/- to the respondents. The trial Court after going through the records and the submissions made on both sides directed the petitioner to pay a sum of Rs.15,000/- each to the respondents 1 to 3 from



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the date of the petition, i.e., 17.07.2018 and continue to pay the monthly maintenance on or before 5th day of every English calender month and also directed to pay the arrears of maintenance within two months. Challenging the same, the present revision has been filed.

3. The learned counsel for the petitioner challenges the impugned order on the ground that the first respondent had married him during the subsistence of earlier marriages and that the third respondent was not born to him as she was born to the first respondent through her first husband with one Prakash Gandhi. In fact, in paragraph No.5 of the petition filed before the trial Court that, the first respondent herself admitted that, it was her third marriage. Even in the cross-examination, the first respondent admitted that she had married twice earlier. That apart, the first respondent has also admitted that she has received money from her earlier marriages and that the relationship between the petitioner and the first respondent is not legal as she has married the petitioner without resolving the first and second marriages and therefore, the respondents are not entitled to claim maintenance from the petitioner.



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4. The learned counsel appearing for the respondents submitted that the petitioner has given consent to the first respondent at the time of marriage that he was ready to shoulder the responsibility of taking care of the third respondent and also he has given his name as her father's name in the school Transfer Certificate and in other certificates and hence, the trial Court has awarded maintenance to the third respondent, which requires no interference from this Court. Further, the petitioner was running a jewellery shop, but he stated that, it has been closed. Admittedly, the respondent has not filed any documents before this Court to show that he has closed his jewellery shop. In the absence of any contra evidence on the side of the respondent, the trial Court has decided that the petitioner has got sufficient means and he is financially sound and capable to pay maintenance to the respondents and therefore, the trial Court rightly awarded maintenance of Rs.15,000/- to each of the respondents, which requires no interference from this Court. Hence, he prays for dismissal of the revision.



5. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

6. The allegation raised on behalf of the petitioner are all have to be gone into at the time of trial and by letting in evidence both orally and documentary to that effect. The trial Court took into consideration that the petitioner has not filed his statement of assets and liabilities and drawn adverse interference against the petitioner. The trial Court also took into consideration that the petitioner has not paid the school fee and other expenses from the date of separation and that the petitioner has voluntarily deserted the respondents. Admittedly, the first respondent has herself admitted in her deposition before the trial Court that the third respondent, viz, Kajal was born to her first husband viz., Prakash Gandhi and therefore, by no stretch of imagination, the petitioner can be directed to pay maintenance to her since she was not born to him and he has not legally bound to pay maintenance to her.



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7. Accordingly, the Criminal Revision Case is dismissed and the order

dated 27.10.2023 is set aside only with respect to pay maintenance of Rs.15,000/- per month to the third respondent. The order passed by the learned V Additional Family Judge, Chennai in M.C.No.477 of 2018 remains intact. The petitioner is directed to pay a sum of Rs.15,000/- to the respondents 1 and 2 as monthly maintenance on or before 7th of every English calendar month and also directed to pay arrears of maintenance within a period of four weeks from the date of receipt of a copy of this order as awarded by the trial Court. Consequently, connected miscellaneous petition is closed.

30.07.2024

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

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The V Additional Family Judge,
Chennai.



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M.DHANDAPANI, J.

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