



CrI.RC.No.983 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2024

CORAM:

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

CrI.RC.No.983 of 2023

Selvi

...Petitioner

Vs.

Munian

...Respondent

Petition filed under Section 397 r/w 401(2) of Code of Criminal Procedure to call for the records in connection with the order dated 30.03.2023 in C.M.P.No.5810 of 2018 in M.C.No.19 of 2012 passed by the learned Judicial Magistrate, Thirukoilur and set aside the same as illegal and improper.

For Petitioner : Mr.S.Kingston Jerold

For Respondent : Notice dispensed with

ORDER

This Criminal Revision case has been filed seeking to set aside the order dated 30.03.2023 passed in C.M.P.No.5810 of 2018 in M.C.No.19 of



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2012 by the learned Judicial Magistrate, Thirukoilur.

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2. The case of the petitioner is that, the marriage between the petitioner/wife and the respondent/husband was solemnised in the year 2006 and out of the wedlock, they were blessed with a male child. While so, due to some matrimonial dispute, the petitioner and the respondent got separated and as the respondent failed to maintain the petitioner, the petitioner along with her minor son filed a maintenance case under Section 125 of Cr.P.C. in MC.No.19 of 2012 on the file of the Judicial Magistrate, Thirukoilur, claiming a monthly maintenance amount of Rs.5,000/- each. After adjudication, the trial Court, vide order dated 22.02.2018 had mechanically dismissed the said maintenance petition. Aggrieved by the same, the petitioner approached this Court by way of filing Crl.RC.No.537 of 2018 and this Court vide order dated 10.09.2018, set aside the order of the trial court dated 22.02.2018 and directed the respondent/husband to pay a monthly maintenance of Rs.5,000/- in favour of the petitioner/wife from the date of filing of the maintenance petition. As the said order of this Court was not complied with by the respondent, the petitioner filed CMP.No.5810 of 2018, seeking necessary direction to the respondent to comply with the order



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of this court dated 10.09.2018, however, the trial court, vide present impugned order dated 30.03.2023 dismissed the said petition. Challenging the same, the present revision has been filed.

3. Learned counsel for the petitioner submitted that, despite the order of this Court dated 10.09.2018 made in Crl.RC.No.537 of 2018, wherein this Court had fixed a monthly maintenance of Rs.5,000/- in favour of the petitioner payable by the respondent and had directed the respondent to deposit the arrears of maintenance to the credit of MC.No.19 of 2012, the respondent failed to deposit the arrears amount and he has not paid the monthly maintenance in favour of the petitioner, which resulted in filing CMP.No.5810 of 2018. While so, the trial court without considering any of the said facts, dismissed the said petition on the ground that, it is the petitioner who refused to receive the maintenance amount, though the respondent tried to pay the same, which is not sustainable. Further, it is pertinent to note that, though the order of this court is dated 10.09.2018, however, the respondent had not deposited the arrears amount and had not paid the monthly maintenance in favour of the petitioner till the date of



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passing of the present impugned order and the respondent had tried to pay only a part of arrears and tried to settle the matter and only due to the said act of the respondent, the petitioner refused to receive the amount. Accordingly, he prayed for appropriate orders.

4. Heard learned counsel for the petitioner and perused the materials available on record.

5. A perusal of the material documents placed on record reveal that, aggrieved by the order of dismissal dated 22.02.2018 made in MC.No.19 of 2012, the petitioner/wife filed a revision before this Court in Crl.RC.No.537 of 2018, wherein this Court, vide order dated 10.09.2018 set aside the order of the trial court dated 22.02.2018 and fixed a monthly maintenance of Rs.5,000/- in favour of the petitioner/wife payable by the respondent/ husband from the date of filing of the maintenance petition and further directed the respondent to deposit the arrears of maintenance to the credit of MC. For non-compliance of the above said order, the petitioner filed CMP.No.5810 of 2018, seeking necessary direction to the respondent to



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comply with the order of this court dated 10.09.2018, however, the said

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petition came to be dismissed, on the ground that, though the respondent/husband is ready to pay the maintenance amount, it is the petitioner who refused to receive the same and refused to make an endorsement to that effect and walked out of the court.

6. Be that as it may. It is to be pointed out that in case of matrimonial disputes, the warring parties would always be at loggerheads and in turn would find all reasonable and unreasonable grounds to throttle the other party. It should be the Court, which has to be circumspect in dealing in such matters, so that both the parties do not suffer the pain of matrimonial discord in the form of maintenance. However, it is to be pointed out that a duty is cast on the husband to maintain his wife and to that end, the husband should endeavor to take all possible steps to pay the maintenance. However, it is not the case of the husband that he had paid the maintenance as ordered by this court. However, equally it is not the case of the wife that the husband did not come forward to pay the maintenance at the time of



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hearing before the Court. The warring parties have to shed their ego and should seek for an amicable settlement and justice delivery system should also be driven only in that angle.

7. In such view of the matter, the court below ought not have dismissed the petition, but should have given a chance to the wife to receive the amount so that a quietus could have been given. In the said scenario, this Court is of the considered view that ends of justice would subserve, if the impugned order is set aside and the matter is remitted to the court below so as to enable the husband to pay the maintenance amount to the wife or to deposit the same before the Court.

8. Hence, this Court is inclined to set aside the impugned order dated 30.03.2023 and accordingly, the impugned order is set aside and the matter is remanded back to the trial court. The Trial court shall after affording opportunity to the parties, calculate the arrears of maintenance amount as ordered by this Court and ensure the payment of maintenance as well as the arrears of maintenance amount to the petitioner within a period of eight



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weeks from the date of receipt of a copy of this order.

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9. With the above observations and directions, this Criminal revision case stands disposed of.

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skt

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

To

The Judicial Magistrate,
Thirukoilur.



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M.DHANDAPANI, J.

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