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CRL. R.C. No.1089/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
10.07.2024	12.07.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**CRL. R.C. NO.1089 OF 2023
AND
CRL. M.P. NO. 8659 OF 2023**

Lucas Daniel Raj

.. Petitioner

- Vs -

Pertreesia Maria

.. Respondent

Criminal Revision Case filed u/s 397 r/w 401 Cr.P.C. praying this Court to call for the records and set aside the impugned order and judgment dated 28.02.2023 passed in M.C. No.254 of 2020 by the learned III Addl. Family Court, Chennai.

For Petitioner : Ms. A.Shabnam Banu

For Respondent : Ms. R.Revathi

ORDER



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Aggrieved by the order of the learned III Addl. Principal Judge, Family Court, Chennai, awarding maintenance to the respondent/wife in a sum of Rs.25,000/- per month, in M.C. No.254 of 2020, vide order dated 28.02.2023, the present revision has been preferred by the petitioner/husband.

2. For the sake of convenience, the petitioner will be referred to as the husband and the respondent will be referred to as the wife in this order.

3. It is the case of the wife, as could be seen from the maintenance case that the marriage between the petitioner/husband and the respondent/wife was solemnised on 5.2.2018 as per Christian rites and customs at Santhome Church and there is no child out of the said wedlock till date.

4. It is the averment of the wife that her husband had neither love nor affection towards her and he had several vices and he had humiliated her at her matrimonial home and due to the mental cruelty suffered by the wife at the hands of the husband and also the domestic violence caused by the husband, the wife was forced to leave her matrimonial home on 10.5.2018. Thereafter, the



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husband filed a petition for restitution of conjugal rights in IDOP No.4741/2019 while the wife filed the petition for interim maintenance u/s 36 of the Indian Divorce Act.

5. It is the further averment of the wife that she landed in a job at Integral Software Service and is working as Project Manager. The husband used to visit her office and cause nuisance and humiliate her in front of her colleagues and on account of the acts of the husband, she was terminated from her job on 3.9.2019.

6. It is the further averment of the wife that her husband is employed as Second Officer in a multinational company and is earning more than Rs.3 Lakhs per month as salary and that her husband is having various immovable properties and out of the immovable properties, the husband is earning more than Rs.40,000/- per month as rent. The wife is staying along with her parents in a rented house and she is taking care of her ailing old parents and she is finding it very difficult to run her life and, therefore, the present petition for maintenance was filed.



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7. Countering the said allegations, the husband filed counter and averred that the wife had no intention to live with him and is taking all steps to dissolve the marriage and the efforts taken by him for reunion were not favourably looked at by his wife, who had utter disregard for him and is only after his money.

8. It is the further averment of the husband that he is a sailor by profession and that his sails are as per the contract period. It is the further averment of the husband that the husband and wife lived together only for a period of 93 days and the wife abandoned her matrimonial home on 10.05.2018 and during the subsistence of the marriage, the husband was subjected to mental and emotional trauma and the only intention of the wife was to torture him for his money and separate him from his parents.

9. It is the further averment of the husband that his wife terminated the pregnancy without even consulting him, which escalated the tensions in the family and despite the struggles, the husband is putting all his efforts to resolve



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the differences and reconcile and live with his wife. However, his efforts went in vain, as after his departure for sail, the wife left her matrimonial home on 10.05.2018 and maliciously lodged a false dowry harassment complaint after 15 months against her husband making unfounded and vindictive allegations against the husband and his family members. The petitioner and his family were dragged to the police station at the whims and fancies of the wife, thereby destroying his reputation in society.

10. It is the further averment of the husband that during the pendency of the criminal complaint, accompanied by a police constable, the wife came to her matrimonial home and took away all her belongings, including what was given to her by the husband during wedding including her fixed deposit with City Union Bank, which clearly revealed that the wife had no intentions of reuniting with the husband.

11. In spite of the efforts taken for compromise, which also resulted in a compromise, the compromise could not culminate as the wife found reasons for quarrelling and indicating her desire not to live with the husband. In such



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circumstances, the husband issued a legal notice dated 27.09.2019 calling upon the wife to reunite with him, but there was no response, which forced the husband to file O.P. No.4741 of 2019 seeking restitution of conjugal rights. However, the wife dragged the said proceedings for more than one year without filing counter. Instead, the wife filed an interim application in I.A. No.6 of 2020 under Section 36 of the Indian Divorce Act seeking interim maintenance of Rs.50,000/- and one-time litigation expenses of Rs.25,000/- from the husband. The husband, who is a sailor, and would be away, had no choice, but to appoint his father as his power agent to conduct the case.

12. It is the further averment of the husband that as the ruthlessness of the wife was revealed in her attitude not to file counter, but only to drag on the proceedings, the husband filed petition to withdraw O.P. No.4741//2019, but objection was filed objecting for the said withdrawal, after nine months, on the ground that interim maintenance petition is pending. In this circumstance, the wife filed M.C. No.254 of 2020 before the III Addl. Family Court, u/s 125 Cr.P.C. claiming maintenance of Rs.50,000/- and one time litigation expenses of Rs.25,000/-.



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13. It is the further averment of the husband that the petition, though filed as early as on 27.11.2020, was neither served on the husband nor any notice or summons of the proceedings were served as mandated under the Criminal Procedure Code. It is the further averment of the husband that the maintenance petitioner was not called together with O.P. No.4741/2019, even though it was tagged along with the said original petition for more than eleven months. However, the lower court proceeded to pass orders on 6.12.2021 in I.A. No.6 of 2020 in O.P. No.4741/2019 awarding monthly maintenance of Rs.30,000/- inspite of the fact that another maintenance petition is pending. Further the husband was also directed to pay the litigation expenses of Rs.25,000/-.

14. The husband challenged the impugned order before this Court in CMA No.220/2022 and this Court, while set aside the said order, made strong observations with regard to the delay in keeping the memo of withdrawal pending in O.P. No.4741/2019 for more than an year and ordered it to be treated as withdrawn as on 23.11.2020 and further ordered that interim maintenance of



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Rs.30,000/- be paid only from August, 2020 to November, 2020 and directed the lower court to dispose of M.C. No.254/2020 within three months from the date of receipt of a copy of this order.

15. In pursuance to the directions of this Court, M.C. No.254/2020 was taken for hearing and after prolonged delay and hearing, during which the husband made further complaints/representations to the trial court, the impugned order had come to be passed directing the husband to pay maintenance to the wife at Rs.25,000/- per month and litigation expenses of Rs.25,000/-, which is put in issue by filing the present revision.

16. Learned counsel appearing for the petitioner/husband submitted that by virtue of the orders passed in CMA No.220/2022, the Division Bench of this Court had directed the learned Judge to independently consider the evidence placed before it to determine whether the respondent is entitled to maintenance and if so the quantum while deciding M.c. No.254/2020. However, the learned Judge has failed to even examine whether the wife is entitled to maintenance and instead passed the impugned order.



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17. It is the further submission of the learned counsel that the contentions raised by the parties were not considered by the court below, but merely advertent to the pleadings of the parties, the order has come to be passed. It is the further submission of the learned counsel that even as on date, the restitution of conjugal rights petition filed by the husband is still pending, but without deciding the same, the maintenance case alone had been decided, which is grossly unsustainable. In this regard, learned counsel, taking this Court through Section 125 (3) and (4) Cr.P.C. submitted that when all efforts were taken by the husband to reunite and when the wife refuses to live with her husband without any tangible reason, the trial court ought not have granted maintenance.

18. It is therefore the submission of the learned counsel that without considering O.P. No.4741/2019 and deciding the same, granting the relief of maintenance u/s 125 Cr.P.C. to the wife is grossly illegal and impermissible, when all along it is the case of the husband that he is willing to maintain his wife, which would be evident from the petition for restitution of conjugal rights filed by him



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and the desertion of the husband by the wife by leaving her matrimonial home and not coming back inspite of the talks of reunion initiated by the husband.

19. In support of the aforesaid submissions, learned counsel placed reliance on the following decisions :-

- i) *Lalit Singh – Vs – State of UP & Ors.*
(MANU/UP/3882/2023);
- ii) *Amit Kumar Kachhap – Vs – Sangeeta Toppo*
(MANU/JH/0113/2024)

20. Per contra, learned counsel appearing for the wife submitted that the mental harassment and domestic violence caused by the husband had driven the wife to leave her matrimonial home and take shelter at her parental abode. It is the further submission of the learned counsel that the wife was abused physically and mentally by her in-laws and they constantly demanded dowry and failure to give the demanded dowry, the wife was threatened that she would be killed. It is the further submission of the learned counsel that the husband used to use filthy and obscene words in front of the public and abuse her. Only to defeat the



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legitimate claim of the wife for maintenance u/s 125 Cr.P.C., the petition for restitution of conjugal rights were filed by the husband.

21. It is the further submission of the learned counsel that the earnings of the husband was admitted by the husband even in his counter apart from rental income and even the livelihood of the wife through her earnings was also sabotaged by the husband by creating nuisance at the place of her work which resulted in the wife being terminated from her employment. Therefore, it necessitated the wife to file the maintenance petition before the court below seeking maintenance at the hands of her husband.

22. It is the further submission of the learned counsel that the wife is always ready and willing to live with the husband and only in such situation, the husband withdrew the petition in O.P. No.4741/2019. It is the further submission of the learned counsel that though the wife was ready and willing to reside with her husband separately in the flat that belonged to him which is opposite to the house where the husband lives, which belongs to the husband however, the husband was not willing to accept the request of the wife, which is clear intention



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of the husband not to reunite. It is the further submission of the learned counsel that all the efforts for reunion was taken by the wife's father and no steps were initiated from the husband's side.

23. It is the further submission of the learned counsel that as against the order granting interim maintenance, the husband filed C.M.A. No.220/2022 in which this Court, while restricted the period of interim maintenance, however, confirmed the amount of interim maintenance ordered and permitted the husband to withdraw O.P. No.4741/2019 and as such the wife is receiving maintenance from her husband since August, 2020 to November, 2020. However, after withdrawal of the petition for restitution of conjugal rights, the husband has filed petition for divorce in O.P. No.841/2023, which clearly shows that the husband was not ready and willing to reunite with the wife. Rightly appreciating all the aforesaid facts, the court below had passed the orders on the maintenance petition, which does not require any interference.

24. In support of the aforesaid submissions, learned counsel placed reliance on the following decisions :-



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- i) Rajnesh – Vs – Neha (SLP (Crl.) No.9503 of 2018 – SC – Dated 4.11.2020);*
- ii) Mithlesh Kumari – Vs – Bindhawasani & Anr. (1990 SRILJ 830)*

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

26. There is no controversy with regard to the dispute between the husband and wife. Both hurl allegations against each other, with regard to the mental cruelty, alleged to be meted out by the other party. However, this Court is not inclined to enter into the same for the reason that a petition in O.P. No.841/2023 filed by the husband seeking divorce is pending consideration.

27. The pivotal issue that is canvassed for consideration on behalf of the petitioner/husband is that it is the claim of the husband that it was the wife, who had deserted him and left her matrimonial home and all the steps taken by him for reunion failed and, therefore, O.P. No.4741/2019 was filed seeking restitution of conjugal rights, but the same was not taken up by the court below, which was



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kept pending for more than a year due to the attempts on behalf of the wife to delay the taking up of the said case. Thereafter, after 9 months, the wife had moved the petition u/s 125 Cr.P.C. in I.A. No.6/2020 seeking interim maintenance. This, according to the husband, clearly shows that the wife was not intent to live with him, inspite of his eagerness to reunite and, therefore, the wife would not be entitled to maintenance u/s 125 (4) Cr.P.C. However, without advertng to the material provision, as the whole case of the husband was premised on his intention to reunite and the wife's disinclination towards reunion, the impugned order had come to be passed, which is wholly arbitrary and perverse.

28. In this regard, it would be useful to refer to Section 125 (4) Cr.P.C., which is pressed into service on behalf of the husband and the same is quoted hereunder :-

"125. Order for maintenance of wives, children and parents.-

(1) If any person having sufficient means neglects or refuses to maintain –

(a) his wife, unable to maintain herself, or



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- (b) *his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*
- (c) *his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*
- (d) *his father or mother, unable to maintain himself or herself,*
a Magistrate of first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, as such monthly rate as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

* * * * *

- (4) *No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.*

* * * * *

(Emphasis Supplied)

29. From the above provision, which provides for maintenance to be paid to the wife, it is evident that there are three conditions, which preclude the



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husband from parting with any maintenance to his wife, which are *i) the wife lives in adultery; or (ii) without any sufficient reason she refuses to live with her husband; or (iii) if they are living separately by mutual consent.*

30. In the present case, the court below has decided the maintenance case and awarded maintenance to the wife in a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) per month by invoking sub-section (1) of Section 125 Cr.P.C. However, the order is silent on the application of sub-section (4) to Section 125 Cr.P.C.

31. It is the specific case of the husband that when he was away on his avocation, viz., sailing duties, the wife left her matrimonial home on 10.5.2018. The said fact is not disputed by the wife as well. However, the whole claim of the wife is predicated upon physical and mental harassment meted out to her by all the family members including her husband. However, what is the physical and mental harassment meted out has neither been spelt out by the wife before the trial court in the maintenance case nor before this Court in the counter filed. Mere assertion that there was physical and mental harassment without any



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material to substantiate the same and also claim dowry demand, without placing substantive material, to establish the same cannot form the basis for granting interim maintenance, when it is the specific case of the husband that he had taken all possible efforts at reunion and had even called upon the wife to come and reside with him.

32. In this regard, a careful perusal of sub-section (4) to Section 125 Cr.P.C. reveals that where the wife, without any sufficient reason, refuses to live with her husband, no maintenance shall be ordered. In this regard, it would be worthwhile to turn the attention of this Court to the original petition in O.P. No.4741/2019 filed by the husband, in which the husband had sought restitution of conjugal rights. It is the specific assertion of the husband that the wife did not take effective steps in the said petition and had dragged the case for more than nine months by seeking adjournment and had not conducted the case and, thereafter, she had come up with I.A. No.6/2020 seeking interim maintenance u/s 125 Cr.P.C.



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33. In fact, it would not be out of context for this Court to point out that CMA No.220/2022, which was filed against the grant of interim maintenance, this Court had not only played the delaying tactics adopted by the wife but had also deprecated the act of the court below in not deciding the case in O.P. No.4741/2019, which had been filed by the husband seeking restitution of conjugal rights. When the husband had filed the petition for restitution of conjugal rights and had called upon the wife to come and reside with him, a duty is cast on the court below to have decided the same at the earliest before deciding the issue of maintenance, as the award of maintenance would be intrinsically connected with Section 125 (4) Cr.P.C., which alone would form the basis to find out whether maintenance needs to be ordered or not.

34. Be that as it may. Pending O.P. No.4741/2019, this Court, in CMA No.220/2022, had allowed the husband to withdraw the said original petition and, thereafter, the husband had filed the petition for divorce in O.P. No.841/2023. However, the filing of divorce petition would in no way be a bar for the court below to consider whether there was disinclination on the part of



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the wife to join the husband and live with him, as that would alone be the deciding factor in the court ordering maintenance to the wife.

35. When the wife is not desirous and shows disinclination to the husband, who is ready and willing to maintain his wife and live along with her, it would not be in the interest of justice to award maintenance to the wife, as otherwise, the intent of the Parliament as spoken through sub-section (4) to Section 125 Cr.P.C. would stand defeated. In the case on hand, it is the specific case of the husband that he had filed the petition for restitution of conjugal rights, even before allegation of domestic violence was made. It is the further case of the husband that the wife had not participated in the disposal of the petition for restitution of conjugal rights and had dragged on the proceeding for more than 9 months before filing the interim application claiming maintenance. When such a specific stand has been taken by the husband with regard to the wife not coming forward to live with him inspite of his assurance to take care of her and there being no specific reason attributed by the wife for adopting such a stand, necessarily, a duty is cast on the court below to deliberate upon the said stand of the husband before ordering maintenance to the wife, when it is borne out by record that the



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husband had all along been calling upon his wife for reunion including filing a petition for restitution of conjugal rights. Therefore the court below ought to have given a finding on the said contention. However, without giving any finding on the above, the court below has ordered payment of maintenance in favour of the wife, which is wholly unjust, arbitrary and perverse.

36. On the aforesaid reasoning, this Court is inclined to set aside the order passed by the trial court with regard to grant of maintenance and, this Court is inclined to pass the following order :-

- i) *The revision petition is allowed and the order in M.C. No.254 of 2022, dated 28.02.2023, passed by the trial court is set aside and the matter is remitted back to the file of the III Addl. Principal Judge, Family Court, Chennai:-*
- ii) *The interim maintenance ordered at Rs.25,000/- is reduced and the petitioner/husband is directed to pay interim maintenance to the respondent/wife at the rate of Rs.20,000/- (Rupees Twenty Thousand only) per month from the date of filing of the petition in M.C. No.254/2022 till orders are passed in the said M.C. No.254/2022;*



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- iii) *The petitioner/husband is directed to deposit the arrears of maintenance, less the amount already paid, to the credit of the maintenance case within a period of four weeks from the date of receipt of a copy of this order;*
- iv) *The petitioner/husband is directed to pay the future maintenance amount as ordered by this Court on or before the 7th day of every English calendar month;*
- v) *The litigation expenses fixed at Rs.25,000/- (Rupees Twenty Five Thousand only) by the court below is also set aside and subject to the decision that may be arrived at afresh, the trial court may fix the litigation expenses;*
- vi) *The III Addl. Principal Judge, Family Court, is directed to take up M.C. No.254/2022 and upon hearing the parties, more particularly with regard to Section 125 (4) Cr.P.C., pass appropriate orders on the petition within a period of five months from the date of receipt of a copy of this order;*
- vii) *The petitioner/husband and the respondent/wife are directed to cooperate with the court below for expeditious disposal of the case within the time frame fixed by this Court;*



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- viii) *If either the petitioner/husband or the respondent/wife are not cooperating in the disposal of M.C. No.254/2022 within the time frame fixed by this court, it is open to the court below to pass appropriate orders on the said petition without granting unnecessary adjournments;*
- ix) *Consequently, connected miscellaneous petition is closed. There shall be no order as to costs in this revision.*

12.07.2024

Index : Yes / No

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To

The III Addl. Principal Judge
Family Court, Chennai.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
CRL. R.C. NO. 1089 OF 2023**

**Pronounced on
12.07.2024**



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