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Crl.RC.No.1067 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM:

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

Crl.RC.No.1067 of 2024

and

Crl.MP.No.9062 of 2024

Deepan Vishweshwaran Ashokan

...Petitioner

Vs.

D.Sharmila

...Respondent

Petition filed under Section 401 r/w 397 of Cr.P.C. To call for the entire records comprised in MC.No.205 of 2021 and set aside the order dated 15.04.2024 made by the learned 3rd Additional Principal Family Court at Chennai.

For Petitioner : Mr.M.Vimal Bobby Crimson

For Respondent : Mr.P.Gunaraj

ORDER

This Criminal Revision case has been filed to set aside the order of the III Additional Principal Family Court, Chennai made in MC.No.205 of 2021



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dated 15.04.2024.

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2. The case of the petitioner is that, the marriage between the petitioner/husband and the respondent/wife was solemnized on 06.12.2017. While so, due to some matrimonial dispute they got separated. In such circumstances, alleging that the petitioner failed to maintain the respondent, she filed a maintenance case u/s 125 of Cr.P.C. in MC.No.205 of 2021 on the file of the III Additional Principal Family Court, Chennai, claiming a monthly maintenance amount of Rs.40,000/-. After adjudication, the trial Court, vide order dated 15.04.2024, awarded a monthly maintenance of Rs.30,000/- in favour of the respondent. Aggrieved by the same, the petitioner/husband has come up with the present revision.

3. Learned counsel for the petitioner submitted that, though the trial court arrived at a conclusion that the monthly income of the petitioner is Rs.62,939/-, however, it is pertinent to note that, using the said income, the petitioner has to take care of himself and his age old parents and also he has to pay the house loan and car loan obtained by him. In such circumstances, the trial court had ordered for payment of monthly maintenance of



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Rs.30,000/- in favour of the respondent, which is highly excessive and the same has been ordered by the trial court without taking into consideration the financial capacity of the petitioner. Further, the respondent's family is running a Gas agency in the name and style of Dhanalakshmi Gas Agency and having two godowns and it is the respondent who is taking care of the same and the petitioner is also running a boutique and she is earning a sum of Rs.1,00,000/- per month from the said businesses and she is capable of maintaining herself. Further, the respondent also received maintenance from her 1st husband and it is the respondent who harassed the petitioner and his family members by making false complaints before the law enforcing agency and thereby, the petitioner filed a divorce petition on the ground of cruelty and the same is pending. However, the trial court without considering any of the above said facts had awarded a monthly maintenance of Rs.30,000/-, which is wholly unsustainable and the same has to necessarily be interfered with. Accordingly, he prayed for appropriate orders.

4. Learned counsel for the respondent submitted that, the trial court upon careful perusal of the documents placed before it and after taking into



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consideration the assets and liability and monthly income of the petitioner, had passed the present impugned order awarding a monthly maintenance of Rs.30,000/- and the same does not require any reduction. He further submitted that, though the petitioner made various allegation with regard to the capacity of the respondent to maintain herself, however, no documentary evidence was submitted by the petitioner either before the trial court or before this Court to substantiate his claim and in the absence of any proof, the trial court had rightly ordered for a maintenance of Rs.30,000/- and the same does not warrant interference of this Court. 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 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 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. Though it is the claim of the petitioner that his wife has sufficient means to maintain herself, however, in order to establish the same, no documentary evidence has been filed by the petitioner.

9. At the same time, when it is the specific case of the husband that he has to take care of his age old parents and he has to repay the house and



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car loan obtained by him, directing the petitioner to pay almost 50% of his income towards monthly maintenance of the respondent would be unjust and therefore, in the interest of either parties, this Court is of the considered view that the monthly maintenance requires to be reduced.

10. For the reasons aforesaid, this Court is inclined to modify the monthly maintenance awarded by the trial court in favour of the respondent in the following terms :-

(i) The petitioner is directed to pay a sum of Rs.25,000/- as monthly maintenance in favour of the respondent from the date of filing of the maintenance petition and shall continue to pay the said amount on or before the 5th day of every English Calendar month;

(ii) the petitioner is directed to pay the entire arrears of maintenance amount at the rate of Rs.25,000/- per month as fixed by this Court, less than the amount if any already paid, to the respondent within a period of four weeks from the date of receipt of a copy of this order.



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11. With the above direction and modification, this Criminal Revision

Case stands allowed in part and in view of the above order passed by this court, the order of interim stay dated 25.06.2024 granted by this Court stands vacated and thereby, the connected miscellaneous petition in Crl.MP.No.9062 of 2024 stands dismissed.

02.08.2024

skt

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

To

The 3rd Additional Principal Family Court,
Chennai.



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M.DHANDAPANI, J.

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