



Crl.RC.No.548 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.04.2024

CORAM:

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

Crl.RC.No.548 of 2021
and
Crl.M.P.Nos.9055 of 2021 & 6228 of 2024

Senthil

...Petitioner

Vs.

Vanitha @ Sivasakthi

...Respondent

Petition filed under Section 397 r/w 401 of Code of Criminal Procedure against the order dated 23.02.2021 passed in C.M.P.No.63 of 2019 in M.C.No.38 of 2015 passed by the Family Court, Dharmapuri.

For Petitioner : Mr.C.Umashankar

For Respondent : Ms.S.Rithika for
M/s.M.Vijaya Raghavan

ORDER

Aggrieved by the order passed by the Family Court, Dharmapuri in allowing the maintenance petition filed by the first respondent directing the petitioner to pay a sum of Rs.1,74,000/-, the petitioner is in this Criminal Revision Petition.



CrI.RC.No.548 of 2021

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2. The petitioner / husband married the first respondent / wife on 25.03.2007 and out of the said wedlock, the second respondent was born. There afterwards, due to the misunderstanding between the first respondent and the petitioner got separated in December 2012 there afterwards, the first respondent filed maintenance case in M.C.No.38 of 2015 wherein the petitioner was ordered to pay a sum of Rs.20,000/- towards medical expenses and ordered to pay a sum of Rs.5,000/- to each respondents. However, the same was not complied with by the petitioner. In the meantime, the petitioner filed a petition seeking restitution of conjugal rights in H.M.O.P.No.89 of 2017 and on deposit of Rs.2,00,000/- in the court deposit, the said petition was allowed vide order dated 13.11.2017. Since the petitioner has not paid the monthly maintenance ordered by the trial court, the respondents filed a petition u/s.128 of Cr.P.C. in C.M.P.No.63 of 2019 seeking payment of arrears of maintenance of a sum of Rs.3,75,000/-, which was allowed in favour of the respondents with a direction to the petitioner to pay a sum of Rs.1,74,000/- to the respondents after subtracting a sum of Rs.2,00,000/- deposited by him in H.M.O.P.No.89 of 2017. Challenging the



CrI.RC.No.548 of 2021

same, the present petition has been filed.

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3. The learned counsel for the petitioner submits that the Family Court erred in ordering payment since during the said period the petitioner and the first respondent lived together and therefore the petitioner is not liable to pay any maintenance amount. Further the petitioner is now earning only a sum of Rs.9,200/- per month and is not in a position to meet out the day to day expenses. Further the learned Judge failed to look into fact that the petitioner and the first respondent have jointly made an endorsement that they are living together. Hence, the order of the Family Court may be interfered with.

4. Per contra the learned counsel for the respondents submit that if at all the petitioner is aggrieved by the order directing to pay the maintenance, the petitioner ought to have approached the competent trial court and not before this Court.

5. Heard the learned the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials placed on



CrI.RC.No.548 of 2021

WEB COPY

6. It is an admitted case that the marriage life between the petitioner and the first respondent did not go well and the first respondent left the matrimonial home. Further, the order of the Family Court ordering maintenance has attained finality. Even though the petitioner and the first respondent have lived together by virtue of an order of the Court dated 13.11.2017, mere order of restitution of conjugal rights cannot dis-entitle the dependent wife from getting the maintenance. However, in the light of the fact that the first respondent herself admitted that the respondent/wife and the petitioner had lived together for some period of time and also taking into consideration the present earnings of the petitioner, this Court is inclined to modify the order.

7. Accordingly, this Criminal Revision Petition is disposed of by modifying the impugned order by directing the petitioner to pay a sum of Rs.87,000/-, less the amount, if any, already paid, after deducting the sum for the period they have lived together. The respondents are at liberty to



CrI.RC.No.548 of 2021

workout their remedy in the manner known to law.

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8. With the above modification and direction, this Criminal Revision Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

17.04.2024

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

To

Family Court, Dharmapuri.



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Crl.RC.No.548 of 2021

M.DHANDAPANI, J.

rap

Crl.RC.No.548 of 2021

17.04.2024