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Crl.R.C.No.1976 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2024

CORAM :

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

Crl.R.C.No.1976 of 2023

Tamilselvan

... Petitioner

Vs.

1.Nithya

2.Minor Monisha

Represented by her mother and natural guardian

1st respondent

... Respondents

Prayer : Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C, praying to set aside the order dated 23.06.2023 in M.C.No.14 of 2018 on the file of the Judicial Magistrate, Cheyyar, Thiruvannamalai District.

For Petitioner : Mr.K.Venkatesan

ORDER

This Criminal Revision Case has been preferred assailing the order passed in M.C.No.14 of 2018 dated 23.06.2023 passed by the Judicial Magistrate, Cheyyar, Thiruvannamalai District.



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2. The case of the petitioner is that, the marriage of the petitioner/husband and the first respondent/wife was solemnized on 29.01.2012 at V.G.P. Kalyana Mandapam, Cheyyar and two minor daughters were born from and out of the wedlock between the petitioner and the first respondent, including the 2nd respondent herein. Due to misunderstanding, the petitioner and the first respondent are living separately. Thereafter, the petitioner filed a petition for divorce in H.M.O.P.No.74 of 2016 on the file of Subordinate Court, Cheyyar and before the same court, the 1st respondent has filed a petition for restitution of conjugal rights in H.M.O.P.No.113 of 2016. In the meantime, the respondents have filed a maintenance case in M.C.No.14 of 2018 claiming monthly maintenance of Rs.10,000/- each to the respondents. After adjudication, the trial court, by its order dated 23.06.2023 has directed the petitioner to pay a sum of Rs.10,000/- p.m. to the 2nd respondent/daughter and the dismissed the case in respect of the 1st respondent/wife. Aggrieved by the same, the present revision is filed by the petitioner/husband.

3. Learned counsel for the petitioner/husband submitted that the



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petitioner is ready for reunion with the 1st respondent/wife along with the 2nd respondent/minor daughter. He also submitted that already one minor daughter is under the care and custody of the petitioner and another daughter/2nd respondent is living with the 1st respondent/wife. He further submitted that the gross salary of the petitioner is Rs.55,850/-, however the net salary is Rs.33,761/-, from which, he is taking care of his aged parents and one of his daughter. However, the trial court had mechanically directed the petitioner to pay a sum of Rs.10,000/- as monthly maintenance to the 2nd respondent, which is wholly unsustainable. Accordingly, he prays for appropriate orders directing the trial court to de-freeze the bank account of the petitioner/husband.

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

5. There is no dispute about the marriage between the petitioner and the 1st respondent. The 1st respondent is the wife and the 2nd respondent is one of the daughter of the petitioner. 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



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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.

6. There is no quarrel with the fact that the 1st respondent/wife is capable of taking care of herself and thereby, the trial court has dismissed the maintenance case in respect of the 1st respondent/wife. The said finding is not assailed by the petitioner/husband. Therefore, this court confirms the finding of the trial court with regard to the rejection of maintenance amount in favour of the 1st respondent/wife.

7. A perusal of the entire papers including the impugned order passed by the trial court would show that the 2nd respondent/minor daughter is under the care and custody of the 1st respondent/wife. Though it is proved that the 1st respondent is capable of taking care of herself by working as a teacher, however, the 1st respondent is not in a position to take care of the 2nd respondent with her earnings without any contribution from the petitioner. Further, it is seen from the records that the petitioner is working



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as a government employee and was earning more than Rs.40,000/-. It is claimed by the petitioner that from the salary received by him, he is taking care of his aged parents and one of his daughter and further, though it is claimed that by the petitioner that he is having debt, however, to that effect, he has not produced any documents before the trial court. By considering all the above aspects, the trial court has rightly ordered a sum of Rs.10,000/- as monthly maintenance in favour of the 2nd respondent, which cannot be said to excessive. Hence, this court is not inclined to interfere with the impugned order passed by the trial court.

8. Accordingly, this court is inclined to dismiss this revision with the following directions :-

(i) the petitioner is directed to pay the entire arrears of maintenance by way of two installments, less the amount, if any, already paid by him;

(ii) the petitioner is directed to pay 50% of the arrears of maintenance in the first installment within a period of four weeks from the date of receipt of a copy of this order and pay the remaining arrears of maintenance amount within a period of four weeks



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thereafter ;



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M.DHANDAPANI, J.

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(iii) After payment of first installment, the trial court is directed to de-freeze the bank account of the petitioner and if the petitioner fails to pay the second installment within the time stipulated by this court, the trial court is directed to freeze the bank account of the petitioner and proceed as per law.

9. With the above directions, this Criminal Revision Case is dismissed.

02.07.2024

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

The Judicial Magistrate, Cheyyar, Thiruvannamalai.

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