



WEB COPY



Crl.R.C.No.1411 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.04.2024

CORAM:

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

Crl.R.C.No.1411 of 2022

R.Shobana

...Petitioner

Vs.

M.Rajasekaran

...Respondent

Criminal Revision Case filed under Section 397 r/w 401 of Code of Criminal Procedure to call for the records in C.M.P.No.638 of 2021 in M.C.No.13 of 2020 on the file of the learned Judicial Magistrate, Arakkonam, allow the revision and set aside the order dated 30.06.2022 in C.M.P.No.638 of 2021 in M.C.No.13 of 2020 passed by the learned Judicial Magistrate, Arakkonam.

For Petitioner : Mr.R.Ganesh Kumar

For Respondent : No Appearance

ORDER

This Criminal revision case has been filed as against the order dated 30.06.2022 made in C.M.P.No.638 of 2021 in M.C.No.13 of 2020 on the file of the learned Judicial Magistrate, Arakkonam. The learned Judge has



Crl.R.C.No.1411 of 2022

ordered interim maintenance of Rs.7,500/- per month to the minor child, however, refused to grant interim maintenance in favour of the petitioner.

2. The case of the petitioner is that, the marriage between the petitioner/wife and the respondent/husband was solemnized on 17.05.2017 as per the Hindu Rites and customs and out of the wedlock, they were blessed with a male child in the year 2018. While so, all of a sudden, the respondent abandoned the petitioner and the minor child and started living separately and he refused to maintain the petitioner and the minor child. Thereby, the petitioner along with her minor son filed a maintenance case under Section 125 of Cr.P.C. in MC.No.13/2020 on the file of the Judicial Magistrate, Arakkonam, claiming a monthly maintenance of Rs.30,000/- in their favour. Pending the same, the petitioner filed an interim maintenance petition in CMP.No.638 of 2021, claiming a interim monthly maintenance of Rs.10,000/- each. After adjudication, the trial Court, vide order dated 30.06.2022, awarded a interim monthly maintenance of Rs.7,500/- in favour of the minor son, however, no maintenance was ordered in favour of the petitioner. Aggrieved by the same, the petitioner has preferred this revision.



Crl.R.C.No.1411 of 2022

3. Learned counsel for the petitioner submitted that, though the respondent stated that the petitioner is living an adulterous life with one Baskar and filed certain documents to substantiate his claim, however, trial court after careful perusal of the said documents clearly held that, mere marking of photographs does not prove that the petitioner is leading an adulterous life. Even then, the trial court refused to grant interim monthly maintenance in favour of the petitioner, which is not sustainable. Further, the petitioner along with her minor child are living with her age old mother, who itself is not having sufficient means of income to meet out her livelihood. Whereas, the respondent is a Central government employee and is earning about Rs.1,00,000/- per month and paying a maintenance of Rs.30,000/- in favour of the petitioner and her minor child will not cause huge damage to the respondent. Accordingly, he prayed for appropriate orders.

4. Though notice was served and the name of the respondent is printed in the cause list, none appeared on his behalf. However, considering the period of pendency of this revision, this Court is inclined to dispose of



Crl.R.C.No.1411 of 2022

this case based on the material documents available on record.

WEB COPY

5. There is no dispute about the marriage between the petitioner and the respondent. The respondent is the husband and out of their wedlock, they were blessed with a son. 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.

6. It is equally not in dispute that, the petitioner along with her minor son filed a maintenance case in MC.No.13 of 2020, claiming a monthly maintenance amount of Rs.30,000/-, pending which, they filed a interim maintenance petition in CMP.No.638 of 2021, claiming an interim maintenance of Rs.10,000/- each and the trial Court, vide impugned order awarded a interim monthly maintenance of Rs.7,500/- in favour of the minor son alone and no interim maintenance was awarded to the petitioner.



WEB COURT

7. A perusal of the materials placed on record particularly the impugned order reveals that, though the respondent stated that the petitioner is living an adulterous life with one Baskar and marked certain documents to substantiate his claim, however, trial court after careful perusal of the said documents clearly held that, mere marking of photographs does not prove that the petitioner is leading an adulterous life. Even then, the trial court refused to grant interim monthly maintenance in favour of the petitioner, on the ground that if the respondent/husband is able to substantiate his allegation with regard to the petitioner/wife leading an adulterous life, the payment of maintenance to an undeserving party would become meaningless, which cannot be subscribed as the same is contrary to its own finding.

8. It is the duty of the husband to maintain his wife and children so long as the marital relationship exists and is not severed leading to a second marriage. In the case on hand, there being no severance of the marital relationship till date, it is the duty of the husband to maintain his wife and, therefore, this Court is inclined to grant interim maintenance.



WEB.COM

9. Hence, this Court is inclined to set aside the order passed by the trial court insofar as non-grant of interim maintenance to the wife and is inclined to fix an interim monthly maintenance of Rs.5,000/- in favour of the petitioner in the following terms :-

(i) The respondent is directed to pay a sum of Rs.5,000/- as interim monthly maintenance in favour of the petitioner from the date of interim maintenance petition till the final disposal of the main case.

(ii) The respondent is directed to pay the arrears of maintenance amount, less than the amount if any already paid, to the petitioner and her minor son within a period of four weeks from the date of receipt of a copy of this order.

(iii) The respondent shall continue to pay the above interim maintenance awarded in favour of the petitioner and the interim maintenance already awarded in favour of the minor son by the trial court on or before the 5th day of every English Calendar month.

(iv) The trial court, without being influenced by the interim maintenance ordered by this Court, shall dispose of the main case in MC.No.13 of 2020 within a period of four months thereafter, after affording opportunity to the parties to establish their case.



Crl.R.C.No.1411 of 2022

WEB COPY

10. With the above directions and modifications, this Criminal Revision Case stands disposed of.

15.04.2024

skt

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

To

The Judicial Magistrate,
Arakkonam.



WEB COPY



Crl.R.C.No.1411 of 2022

M.DHANDAPANI, J.

skt

Crl.R.C.No.1411 of 2022

15.04.2024