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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :20.12.2023

Pronounced on:12.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.R.C.(MD).No.1062 of 2022

C.Arunkumar

... Petitioner

Vs.

Sandhya

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and allow the revision and consequently set aside the order made in M.C.No.3 of 2021 dated 04.08.2022, by the Family Court, Tirunelveli.

For Petitioner : Mr.V.Jayachandran

For Respondent : Mr.T.Seenisyed Amma
for M/s.Lajapathi Roy Associates

ORDER

The petitioner preferred this Criminal Revision Case challenging the maintenance order granted in M.C.No.3 of 2021 on the file of the Family Court, Tirunelveli, by impugned order dated 04.08.2022.



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2.The respondent herein has filed a maintenance claim in M.C.No.3 of 2021 stating that the marriage between the respondent and the petitioner was solemnized on 27.05.2018. After the marriage, the petitioner took the respondent to Singapore and they lived in Singapore. The petitioner never treated the respondent well and used to humiliate the respondent by teasing her. The respondent further alleged that the petitioner assaulted her and hence, she developed spinal cord pain. Thereafter, the petitioner sent the respondent away to Chennai on 25.07.2018 stating that he has to go to Vietnam for some work. Subsequently, the petitioner abused the respondent and insisted her to go to her parental home and on 28.07.2018, she was packed to her parental home.

3.The petitioner further insisted the respondent to get counselling for her behaviour. The petitioner also filed a divorce petition within a period of four months from the date of marriage. In the meantime, the petitioner developed acute Spinal Cord pain, for which she had to undergo a surgery at Nagercoil. Then, the respondent filed a petition for claiming maintenance under Section 125 of Cr.P.C., claiming a sum of Rs.50,000/- from the petitioner stating that the petitioner is working as a senior research scientist and earns a sum of Rs.10,00,000/- per month.



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4.The revision petitioner filed a counter stating that the respondent filed the Domestic Violence Petition against him and he filed a quash petition to quash the doemstic violence case. While disposing the said case, the High Court directed him to pay a sum of Rs.5,000/-per month as interim maintenance. He is regularly paying the said amount. In view of the pendency of the Domestic Violence Petition, the present claim of maintenance under Section 125 of Cr.P.C., is not maintainable. After the marriage, on 27.05.2018, the behaviour of the respondent was weird and hence, there was some disord between them. Hence, he submitted that the allegation of the respondent is false and as per the advice of the petitioner alone his parents took the respondent to Tirunelveli ie, the parental house of the respondent on 28.07.2018, in order to fix surgery. He further alleged that the petitioner is not getting a salary as stated by the respondent. The petitioner further alleged that the respondent is well placed woman and he has taken a rental house for Rs.1,00,000/- per month. He further contented that the claim petition under Section 125 of Cr.P.C., is not maintainable, in view of the pendency of the Domestic Violence petition.



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5. During the Course of the trial, the respondent examined herself as P.W.1 and exhibited Ex.P1 to Ex.P7. On the side of the petitioner his father was examined as R.W.1 and marked Ex.R1 to Ex.R10.

6. The learned trial Judge considered the entire evidence and granted maintenance of Rs.25,000/- in addition to the interim maintenance granted in D.V.O.P. The learned trial Judge considered the records adduced by the respondent and also the other circumstances available on record and fixed that the income of the petitioner is more than a sum of Rs.10,00,000/- per month. Challenging the same, the petitioner filed this Criminal Revision Case before this Court.

7. The learned counsel for the petitioner submitted that the petition under Section 125 of Cr.P.C., after granting interim maintenance in D.V.O.P., is not maintainable. The learned trial Judge, failed to consider that the respondent has not submitted the declaration of her assets and there was no proper disclosure of her income. The learned trial Judge without deducting the amount granted in the D.V.O.P., granted maintenance of Rs.25,000/- in addition to the Rs.5,000/- granted in the D.V.O.P., as interim maintenance and this is not in accordance with law.



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8.The learned counsel for the respondent submitted that there is no bar to grant the maintenance in addition to the interim maintenance granted in the D.V.O.P. The learned trial Judge considering the guidelines issued by the Hon'ble Supreme Court in the case of Rajnesh Vs.Neha, correctly granted maintenance of Rs.25,000/- in addition to Rs.5,000/- which was granted as interim maintenance under D.V. Act. The non filing of the declaration form is not a ground to decline the maintenance, when the petitioner has not brought out any suppression of the income of the respondent. There was no contra evidence adduced to prove the income of the respondent. Hence, he seeks for dismissal of this case.

9.This Court considered the rival submissions and perused the records and also the precedents relied upon by them.

10.It is the admitted case that the marriage was solemnised on 27.05.2018 and till date the relationship of the petitioner and the respondent as a husband and wife is not dissolved in accordance with law. The case of the petitioner that the respondent was driven out from the matrimonial home, the reason assigned by the respondent in her maintenance petition all are subject matter of the



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divorce petition filed by the petitioner, which is pending before the competent Court. Further, the petitioner has not produced any evidence to show the income of the respondent wife. He has also not adduced any evidence to prove the source of the income of the respondent through her parents. Hence, in all aspect, the petitioner failed prove the income of the wife and her parents. On the other hand the respondent proved the income of the petitioner, through Ex.P7 and also the evidence of R.W.1, that the petitioner received a monthly salary of Rs.1,89,000/-. The learned trial Judge after evaluating the entire evidence correctly granted the maintenance of Rs.25,000/- in addition to Rs.5,000/- already granted under D.V.Act.

11.The Hon'ble Supreme Court in the case of Rajnesh Vs.Neha has held that in the event of granting the maintenance in the parallel proceedings, the said amount either be added or deducted. In the event of the decision taken in the petition under Section 125 of Cr.P.C., the wife is not entitled to claim in the other proceedings as per Section 26 of D.V.Act. Moreover, Section 20(d) of D.V.Act, also reads that she can claim maintenance in addition to maintenance claim under 125 of Cr.P.C. Therefore, the contention of the petitioner that claim petition under Section 125 of Cr.P.C., is not maintainable, in view of the interim maintenance granted under D.V.Act, deserves to be rejected.



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12.Hence, in all aspect, the order of granting maintenance to the respondent is sustainable and there is no perversity in the finding rendered by the trial Court. Accordingly, this Criminal Revision Case stands dismissed.

12.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

The Family Court,
Tirunelveli.



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K.K.RAMAKRISHNAN, J.

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