



Crl.R.C.(MD) No.51 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.06.2023

Delivered on : 30.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.51 of 2023
and
Crl.M.P.(MD)No.741 of 2023

Jebaraj

: Petitioner

Vs.

Aasha

: Respondent

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the judgement passed by the Judicial Magistrate Court, Tenkasi in M.C.No.10 of 2022, dated 21.11.2022 and set aside the same.

For Petitioner : Mr.R.Gowri Shankar

For Respondent : Mr.P.Senguttarasan



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ORDER

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This Criminal Revision Petition is directed against order passed in M.C.No.10 of 2022, dated 21.11.2022 on the file of the learned Judicial Magistrate, Tenkasi, granting maintenance in the petition filed under Section 125 of the Code of Criminal Procedure.

2. Admittedly, the marriage between the revision petitioner and the respondent was held on 10.01.2014 at AG Church, Thannoothu as per Christian Rites and Customs and due to their wedlock, a child was born and subsequently died on 21.01.2019 and that thereafter, due to misunderstanding, both of them are living separately.

3. It is not in dispute that the petitioner is working as a Constable in C.R.P.F and initially he was working in Jammu & Kashmir and subsequently, transferred to Coimbatore and at that time, both of them were residing in Coimbatore.

4. The respondent/wife, by alleging that the petitioner has neglected to maintain the respondent and despite her efforts, the petitioner has not chosen to



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live with the respondent and that since the respondent is unable to maintain herself and is depending on her aged parents, she constrained to laid the above petition, claiming maintenance.

5. The revision petitioner has filed a counter statement disputing the respondent's petition averments and whereunder, it has been alleged that the respondent alone had left the matrimonial home without intimating the petitioner; that the respondent while leaving the matrimonial home had taken away all her jewels and articles; that the respondent had taken the amounts from the bank account of the petitioner while he was in Jammu & Kashmir and that since the respondent is not willing to live with the petitioner, he is not liable for the maintenance claim.

6. During enquiry, the respondent/wife has examined herself as P.W.1 and exhibited six documents as Ex.P.1 to Ex.P.6. The petitioner/husband has adduced neither oral nor documentary evidence.

7. The learned Judicial Magistrate, upon considering the evidence available on record and on hearing the arguments of both the sides, has passed



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the impugned order dated 21.11.2022, directing the petitioner to pay monthly maintenance at Rs.25,000/- to be payable on or before 5th Every English Calender month and further directed the petitioner to pay the arrears from the date of petition. Aggrieved by the above order, the husband has come forward with the present revision.

8. The learned counsel for the petitioner would submit that the respondent herself has claimed Rs.10,000/- per month as maintenance, but the trial Court has awarded Rs.25,000/- per month; that the petitioner is getting his monthly salary of Rs.65,000/- as he has been working in most critical area of Jammu and Kashmir and is not eligible to get salary while working in normal place; that the respondent had voluntarily deserted the revision petitioner and as such, she is not entitled to get maintenance; that the petitioner and the respondent are having a joint bank account and from the period 2019 to 2020, the respondent had withdrawn more than Rs.6 lakhs from the said account and that the trial Court has failed to consider that the petitioner has been paying Rs.8,900 /- as EMI for the loan amount of Rs.5 lakhs obtained from SBI Bank for the purpose of medical expenses to his mother and he has also been paying Rs.8,000/- towards LIC policy.



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9. As usual in the matrimonial proceedings, the petitioner/husband and the respondent/wife are making allegations and counter allegations against each other. The main contention of the revision petitioner is that though he is willing to join with the respondent, she has expressed her unwillingness to live with him. The respondent in her cross examination would say

“இன்றும் எதிர் மனுதாரர் என்னை அழைத்து சேர்ந்து வாழ தயாராக இருக்கிறார் என்பதால் நான் சேர்ந்து வாழ தயாரா என்றால் எதிர் மனுதாரர் இப்படி தான் எப்போவும் சொல்கிறார். இந்த வழக்கிற்காக தான் இவ்வாறு சொல்லுவதால் என்னால் போக முடியாது.”

10. Considering the above, as rightly contended by the learned counsel for the respondent, it cannot be taken that the respondent alone had refused to live with the petitioner. More importantly, even according to the revision petitioner, he has filed a divorce petition and the same was ordered to be dismissed for non prosecution. As rightly contended by the learned counsel for the respondent, in case, if the revision petitioner is ready and willing to join with the respondent, it is not known as to why he has filed a divorce petition initially. Considering the above, the finding of the trial Court that the respondent is entitled to get maintenance cannot be found fault with.



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11. Now turning to the quantum of maintenance, according to the respondent, the petitioner has been working as Constable in C.R.P.F and is getting monthly salary of Rs.80,000/- and owning properties worth about Rs.50 lakhs.

12. The petitioner has disputed the said factum and according to him, he has been receiving monthly salary of Rs.65,000/- in Jammu and Kashmir and in other place at Rs.45,000/- per month; that the petitioner had obtained loan of Rs.5 lakhs to meet out the medical expenses of her mother and for that loan, he has been paying EMI of Rs.8,900/- and Rs.8,000/- for LIC policy and that he has to maintain his aged mother and that therefore, the claim by the respondent is excessive.

13. It is pertinent to note that the respondent has claimed Rs.10,000/- as monthly maintenance, but the learned Magistrate has awarded Rs.25,000/- per month. It is pertinent to note that the petitioner has specifically admitted that his job is Constable in C.R.P.F and according to him, he has been getting Rs.65,000/- in Jammu and Kashmir and Rs.45,000/- in other places. Admittedly,



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the petitioner has not chosen to produce his pay slip or salary certificate to prove his actual income.

14. Though the petitioner has alleged that the respondent has been earning Rs.30,000/- and also getting income from share of properties at Rs.7,000/- per month, the respondent has specifically disputed the above aspects. Even thereafter, the petitioner has not chosen to adduce any evidence in this regard.

15. It is settled law that while setting out for the criteria for determining the quantum of maintenance, there can be no straight jacket formula for fixing such quantum and that the maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the husband, nor should it be so meagre that it drives the wife to penury.

16. The Court while determining the quantum of maintenance has taken into consideration, the status of the parties; reasonable needs of the wife and



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dependent children; whether the wife is educated and professionally qualified; whether the wife has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the wife was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family and reasonable costs of litigation for a non-working wife.

17. In the case on hand, considering the job and income of the petitioner and also taking note that the petitioner has not shown that the respondent is employed and is getting good income and the present economic scenario and the status of the parties and also the maintenance amount claimed by the respondent, this Court is of the clear view that fixing the monthly maintenance amount of Rs.25,000/- is excessive and the same is liable to be interfere with. Though the respondent has claimed Rs.10,000/- only as monthly maintenance, she has neither adduced any evidence nor produced any materials for claiming more maintenance amount at Rs.25,000/- . Hence, this Court fixes the monthly



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maintenance at Rs.10,000/- as claimed by the respondent and the same would be just and reasonable.

18. In the result, the Criminal Revision is partly allowed and the monthly maintenance at Rs.25,000/- is reduced to Rs.10,000/- and the revision petitioner is directed to pay the monthly maintenance at Rs.10,000/- from the date of petition, payable on or before 5th Every English Calender month and is further directed to pay the entire arrears within one months from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed.

30.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
das

To

- 1.The Judicial Magistrate, Tenkasi.
- 2.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

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K.MURALI SHANKAR, J.

das

Pre-delivery order made in
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