



Crl.R.C.(MD).No.743 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.08.2023

Pronounced on : 19.10.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.743 of 2023

and

Crl.MP(MD)No.10169 of 2023

Chinniah

... Petitioner/Respondent

Vs.

1.Hemalatha

2.Akila Shri

... Respondents/Petitioners

PRAYER: Criminal Revision Petition has been filed under Section 397 & 401 of Cr.P.C., to set aside the order passed in M.C.No.23 of 2018 on the file of the learned Family Judge (Full Additional In-charge), Dindigul, dated 08.06.2022 and allow the Criminal Revision Petition.

For Petitioner : Mr.C.Venkatesh

For Respondents : No Appearance

ORDER

The petitioner filed this revision challenging the maintenance order passed in favour of his wife and minor child by the learned Family Judge (Full Additional In-Charge), Dindigul in M.C.No.23 of 2018 by the impugned order dated 08.06.2022.



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2.The first respondent married the petitioner on 02.09.2011. Out of the wed-lock, on 14.07.2012, the second respondent was born. According to the first respondent, the petitioner in inebriated condition caused cruelty and also suspected her character and driven her out along with child from the matrimonial home. After that, he is living with another lady. Therefore, the first respondent made a complaint before the jurisdictional police. In the said circumstances, without any income to meet out her livelihood, the respondents filed the maintenance claim in M.C.No.23 of 2018 on the file of the learned Family Court, Dindigul, by claiming total monthly maintenance of Rs.20,000/-.

3.The petitioner filed the counter by denying the allegations that the first respondent on her own volition left from the matrimonial home and lived in her parental home without any reasonable cause. The petitioner further stated in the counter that he has already gifted 15 sovereigns jewels to the first respondent during her stay at matrimonial home. He further stated that he only received Rs.10,200/- as monthly income after the deduction. Hence, he prayed to reject the maintenance claim.

4.During the course of the proceedings, in order to substantiate the claim, the first respondent examined herself as P.W.1 and another witness P.W.2 and



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filed the documents Ex.P.1 to Ex.P.7. No one was examined on the side of the petitioner and one document was marked as Ex.R.1.

5.The learned trial Judge after considering the evidence has come to the conclusion that the petitioner/husband is earning a sum of Rs.30,000/- per month. In the absence of the contra evidence by the husband, the learned trial judge has taken the income of the husband as Rs.30,000/- by accepting the plea of the respondent\wife. The learned trial judge also considering the admission of P.W.2, the mother of P.W.1, that she is running a petty shop and the first respondent is working as a nurse, granted only Rs.12,000/- as maintenance amount.

6.Challenging the same, the petitioner filed this Revision on the ground stated in the memorandum of grounds of Revision.

7.The learned counsel for the petitioner reiterated the said grounds and specifically made the following submissions:-

(i) The learned trial judge failed to consider the fact that the petitioner is working as a Driver in the Tamil Nadu State Transport Corporation and without



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marking the salary certificate, the learned trial judge erroneously come to the conclusion that his monthly income is Rs.30,000/-. Therefore, the said finding is liable to be set aside.

(ii) The learned trial Judge failed to see the first respondent left the matrimonial home without any valid reasons and hence, the petitioner is not legally bound to pay maintenance.

(iii) The learned trial Judge failed to consider that the first respondent is working as a nurse and her mother is also running a petty shop. Hence, sufficient income is available to maintain themselves. Per contra, the petitioner submitted that he is receiving only Rs.23,338/- as salary per month. In the said amount, he has to maintain his age old parents. Therefore, the maintenance amount of Rs.12,000/- granted by the Court below is not legally sustainable.

8.This Court considering the submission of the learned counsel for the petitioner and perused the documents filed by the revision petitioner.

9.The marriage between the petitioner and the first respondent had taken place on 02.09.2011. Out of the said wedlock, the second respondent was born on 14.07.2012. There is no dispute in the said relationship. According to the



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wife/first respondent, the petitioner harassed her and caused cruelty to her and driven her out along with the child from the matrimonial home in the year 2014. Therefore, the first respondent is now living with her parents and taking care of her female child. According to the allegation of the respondent, now, the petitioner is living with another lady. The first respondent narrated the events of cruelty caused by the petitioner in the matrimonial home and she justified her separation with reasonable cause.

10.The petitioner marked Ex.R.1 in which there is no averment regarding the payment of permanent alimony. The material averment of the Ex.R.1 is as follows:-

“தங்க நகை 10 பவுனை தங்களிடம் பெற்றுக்கொண்டு குழந்தை C.அகிலாஜியை ஒப்படைக்கிறேன். மேலும் நமக்குள் உள்ள திருமண உறவுகளை நீதிமன்றம் மூலம் நிவாரணம் தேடி கொள்வது என்க முடிவின் அடிப்படையில் செயல்படுவேன். இவை அனைத்தும் என் சுயநினைவுடன் எழுதியது என்பதை ஒப்புக்கொள்கிறேன்.

இப்படிக்கு,
(sd/-Chinniah)”

11. From the above, it is clear that there was no payment of permanent alimony to the respondents and also there was no legal separation as on date. Hence, the relationship between the petitioner and the first respondent as a husband and wife is still subsisting. Therefore, the petitioner is legally bound to pay the maintenance to the respondents.



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12. Even though, the petitioner has not produced his salary certificate during the course of cross-examination. Now, he has produced the Salary Certificate to prove his gross salary is Rs.41,715/- and net salary is Rs.23,338/-. The learned trial Judge considering the other circumstances that the family members of the petitioner have income through the agricultural lands, correctly fixed the monthly income of the petitioner as Rs.30,000/- per month and awarded the maintenance of Rs.12,000/- to the respondents in total.

13. The learned trial Judge also considered the income of the first respondent and granted only Rs.2,000/- to the first respondent as monthly maintenance. Further, the Hon'ble Supreme Court held that the first respondent is working and earning monthly income is not a ground to disown the liability of the petitioner to maintain his wife and child. In this aspect, it is relevant to note the Hon'ble Supreme Court judgment in *Rajnish v. Neha* reported in (2021) 2 SCC 324 :-

“90. The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:



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14. Therefore, the learned trial Judge has correctly come to the conclusion that the petitioner is duty bound to maintain the respondents. Further, the learned trial Judge considering the present day cost of living, educational expenditure of the second respondent and also taking into account of the income of the first respondent granted only reasonable amount of Rs.12,000/- as monthly maintenance to the both respondents.

15. Hence, this Court does not find any perversity in the order passed by the learned trial Judge in granting maintenance of Rs.2,000/- to the first respondent and Rs.10,000/- to the second respondent.

16. Accordingly, the order passed by the learned Family Judge (Full Additional In-Charge), Dindigul, in M.C.No.23 of 2018, dated 08.06.2022, is hereby confirmed and the Criminal Revision is dismissed. Consequently, the connected miscellaneous petition is closed.

19.10.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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K.K.RAMAKRISHNAN, J.

dss

To

- 1.The Family Judge (Full Additional In-charge),
Dindigul.
- 2.The Section Officer,
Records Section,
Madurai Bench of Madras High Court, Madurai.

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