



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2015

CORAM:

THE HONOURABLE MRS.JUSTICE S.VIMALA

WEB COPY

Criminal Revision Case (MD)No.483 of 2015
and

M.P.(MD)No.1 of 2015

K.Meenakshi Sundaram

.. Petitioner/Respondent

Vs.

1.M.Rajathi

2.Minor Harini

.. Respondents/Petitioners

(The minor 2nd Respondent through her
mother and guardian of 1st respondent)

Revision is filed under Section 397 and 401 Cr.P.C. to set aside the order dated 13.08.2015 passed in M.C.No.35 of 2015 by the learned Family Court, Tirunelveli.

For Petitioner : Mr.S.Meenakshi Sundaram

ORDER

It is a petition for maintenance filed by the wife and child in M.C.No.35 of 2015 seeking a sum of Rs.10,000/- to the wife and Rs.5,000/- to the child.

2.It is the case of the wife that she is living upon the earnings of the retired father, who was working in fire station and therefore, he is not able to maintain herself. It is also stated that even though there is a child, the husband did not take interest atleast in seeing the child for a period of four years.

3.So far as the financial ability of the husband is concerned, it is stated the he is employed as supervisor in a private concern and earning a sum of Rs.20,000/-. Apart from that he is stated to be the owner of a house at Raviram Nagar and from the landed property, he is getting Rs.20,000/- p.m. But for all these averments, no documentary evidence has been produced to show that he is the owner of the immovable property and he is getting income from those properties. Perhaps based upon the admission of the husband that the wife may require Rs.2,000/-, the trial Court has fixed the amount of maintenance at Rs.2,000/- each to the wife and child.

5.In Rousseau Mitra Vs. Shrimati Chandana Mitra -MANU/WB/0221/2003: AIR 2004 Calcutta 61, the learned Single Judge of Calcutta High Court has held that when the husband voluntarily having incapacitated himself from earning, he cannot avoid his liability to maintain his wife and child. The means and capacity of a person against whom the award has to be made should be taken into consideration for determining the quantum of maintenance. In fact, in case of the husband, it is not only the actual earning, but also his potential earning capacity, which must be considered i.e. there is a presumption that every able-bodied person has a capacity to earn and maintain his wife. The income of the husband is a



significant factor to be considered by the court in fixing the quantum of maintenance.

6. In the opinion of the Court, the petty amount as ordered by the Court below is also cannot be justified, but it is not the case for enhancement of maintenance. Even assuming that he has no income and when it is shown that he has got a potential capacity to earn money, it is his duty to pay maintenance to the wife and child.

7. Considering the present day cost of living, the amount as ordered by the Court below cannot be said to be excessive. Therefore, the revision petitioner has no case. Accordingly, the revision is dismissed. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(AS)

/True copy/

Sub-Assistant Registrar

To
The Judge, Family Court, Tirunelveli.

Sm:sks-rr:29.10.2015:2P/2C

Cr1.R.C.(MD)No.483 of 2015