



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2016

CORAM:

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THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.L.RC(MD) No.221 of 2016

and

CRL MP(MD)No.2929 of 2016

Marimuthu

... Petitioner /Respondent

-vs-

Minor Daniya

Rep.by her mother and Guardian

Vimala

... Respondent/Petitioner

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the records from the learned Chief Judicial Magistrate, Dindigul in M.C.No.26 of 2014, dated 16.03.2016 and Set aside the same.

For Petitioner: Mr.N.Sathish Babu

For Respondent: Mr.V.S.Kishore Kumar for
Mr.M.O.Thevankumar

O R D E R

This revision petitioner, who is the father of the respondent challenges the quantum of maintenance ordered by the learned Chief Judicial Magistrate, Dindigul in M.C.No.26 of 2014 to his daughter / respondent, as excessive and beyond his means.

2.In view of the Court order, the girl's father and her mother are not husband and wife. The marital tie between her parents is over. They have become ex-husband and ex-wife, but not the parentage to the respondent.

3. The respondent's father and mother are employed. The revision petitioner is a Technical Assistant connected with an educational institution near Gandhi Gram Rural Institute University. The respondent's mother is employed in Aids Control Society in Dindigul, as a councilor. Respondent's parents are separated. Now it is over. Each bid farewell to other through a court order but they cannot bid farewell to the respondent. Because no law can sever the girls relationship with



her parents. The respondent is not concerned with the dispute with her parents. Now she is in the custody of her mother. The respondent is studying 9th standard in Kendra Vidyalaya situated in Gandhi Gram Rural Institute. Interestingly, her father also happens to work there.

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4. Through her mother, the respondent petitioned the learned Chief Judicial Magistrate, Dindigul in M.C.No.26 of 2014 claiming maintenance. The trial Court referring to the oral and documentary evidence and also the earnings of the revision petitioner ordered Rs.12,000/-, as monthly maintenance to the respondent from the date of order. Now, the father is upset by the quantum of maintenance. He cannot altogether abrogate but now he tries to minimize the quantum.

5. According to the learned counsel for the revision petitioner, after suffering several deductions what the revision petitioner receives is only around Rs.10,000/- per month. The respondent gets free education in a Government run school. The respondent's mother is also employed. Further, when their marriage was dissolved by a decree, the respondent's mother had agreed to maintain her daughter. The revision petitioner is aged 54 years. He is suffering from heart ailment and other ailments. He is a sick man. He is sick of the quantum of the amount granted.

6. On the other hand, the learned counsel for the respondent would submit that the respondent is studying IXth standard. She is undergoing various extra curricular activities, computer course, tuition. Lot of expenses have to be incurred. Education expenses is on the raise. The revision petitioner receives more than Rs.51,000/- per month.

7. I have considered the rival submissions, perused the impugned order and also the materials on record.

8. So far as fixing of maintenance under Section 125 Cr.P.C is concerned, the Court must take into account the financial capacity of the husband and also financial position of the respondent, if she is wife. Question of considering the financial capacity of the child will not arise. As per the provision of 125 Cr.P.C., a mother cannot be asked to pay maintenance to her son and daughter. A wife cannot say and dump her child solely on the head of her husband. Now these days of joint earnings, financial responsibility also become mutual. But it will be heavy on the part of the father. Primary responsibility is fixed on the father. But, so far as the scope of Section 125 Cr.P.C., is concerned, the girl's mother cannot be asked to pay maintenance to her son and daughter. But at the same time, the Court can take into account the financial support the child receives from her mother. The father is bound to provide a decent standard of living to his



daughter, according to his family status. But it should be in proportion to his financial capacity. Now in this case, the revision petitioner, is decently employed. He is 54 years old. He is holding a permanent post.

9. In fixing Rs.12,000/- per month, the trial Court referred to Ex.R3 salary certificate of the revision petitioner. His gross salary comes to Rs.51,743/-. It is at the close of last year. It is contended that he receives only Rs.11,000/- per month. He is having heart ailments. The statutory deductions such as income tax, permitted level of GPF deduction are certainly taken into account. They are compulsory deductions. There are certain self created deductions. They should be ignored. Some times, the husband to show a gloomy picture of his salary, voluntarily certain major deductions. They cannot be given importance. He is decently employed, as a Technical assistant, he is bound to give a decent leaving to his daughter. Of course, the girl's mother earns Rs.25,000/- per month. She is also earning, but now a days it is not too big an earning. In these days, especially, for a grown up girl child every days expenses are more she needs cosmetics. Cost of books is also move. In such circumstances, I am of the considered view that Rs.12,000 per month is neither less nor more.

10. For the above reasons, this revision fails and it is dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

mpk

To

The Chief Judicial Magistrate, Dindigul.

+1CC to Mr.N.Sathish Babu, Advocate Sr.No.30114

+1CC to Mr.M.O.Thevan Kumar, Advocate Sr.No.30228

GJM/SK/SKn/23.6.16-3p-4c

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