



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

Cr1. R.C. (MD) No.414 of 2016

WEB COPY

M.Mohamed Feroze

... Revision Petitioner/
Respondent

-vs-

Minor M.Mohamed Ashfaq

Through his mother, guardian

and next friend Smt.A.Sulaiha Barvin ... Respondent/Petitioner

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the records of the order dated 19.12.2014 in M.C.No.6 of 2014 on the file of the learned Family Court, Tirunelveli and set aside the same.

For Petitioner: Mr.T.Murugan

For Respondent: MrK.Rajeswaran

O R D E R

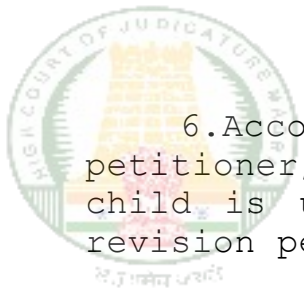
The father of a child, aggrieved by the grant of Rs.10,000/- as monthly maintenance to his son has directed this revision.

2.The revision petitioner is the husband of the mother of the child. Due to some difference of opinion the spouses are living separately. The revision petitioner is employed in a software company in Mamallapuram. He is residing in Palavakkam, Chennai.

3.The child's mother is working in a concern in Chennai. She is residing in a ladies hostel. The child is 2½ years old. In the circumstances it has become very difficult for her to maintain her child. So, her parents in Tirunelveli are taking care of her child.

4.In the circumstances, the child's mother has sought for maintenance before the Family Court, Tirunelveli in M.C.No.6 of 2016 claiming Rs.20,000/- as maintenance to her son from child's father/revision petitioner. The petition was hotly contested. Ultimately, the revision petitioner was directed to pay Rs.10,000/- per month to his child from the date of petition.

5.Aggrieved, the child's father has directed this revision.



6. According to the learned counsel for the revision petitioner, since the child's mother is earning and since the child is under the care and custody of the grand parents, the revision petitioner need not pay maintenance to the child.

7. The learned counsel for the revision petitioner further contended that after so much of deduction ultimately he receives only Rs.53,000/- per month as his net salary. He is residing in a rented premises. He is also taking care of his age old parents. In the circumstances, the amount of maintenance fixed by the Trial Court is more.

8. The learned counsel for the revision petitioner also submits that he did disown his son. He will meet his necessary expenses and at the most it may not be more than Rs.7,000/- per month. He is willing to pay this amount.

9. On the other hand, the learned counsel for the respondent would submit that if one read Section 125 Cr.P.C. carefully a duty is cast upon male member of the family to maintain his wife and children and parents who are unable to maintain themselves. In such circumstances, simply because the child's mother is earning she cannot be asked to pay maintenance to her son, when especially Section 125 Cr.P.C., does not say so.

10. The learned counsel for the respondent further submits that in view of her precarious position and she having employed in Chennai, it is difficult for her to maintain her child and out of compulsion and out of her inability, her parents are taking care of her child.

11. The learned counsel for the respondent further submitted that it is the duty of the father to bear all the reasonable expenses of his son. Merely because the grand parents are taking care of the child, of course, the revision petitioner cannot avoid his duty to meet the expenses of his son.

12. The learned counsel for the respondent further submitted that actually College fees is less, however, school fees is very high. Even at the pre-K.G. level huge amount has to be spent. Now its educational expenses is much more than it was expected. So much money is needed for the educational expenses. Further, the child is a kid. Frequent medical care, consequential expenses and necessary food expenses are on the rise. It is not that the revision petitioner has no means. He is earning very nicely. Every month he receives hefty salary. He has sufficient financial capacity.

13. The learned counsel for the respondent also submitted that in fixing the quantum of maintenance, the Court must also take into account the social status to which the parties are accustomed



to. When the father is living with all comforts he must see that his son also gets similar comfort.

14. We have seen the two sides of the coin in the form of their arguments. At any rate the child cannot be denied maintenance and that is also not the wish of the revision petitioner.

15. As rightly submitted by the learned counsel for the respondent, the obligation to maintain is imposed on the male member of the family. The Courts have to interpret the law as it is found in the enactment. Section 125 Cr.P.C. is very clear that the father has to provide maintenance to his children. An earning mother will not come under Section 125 Cr.P.C. However, if she voluntarily gives, that is a different matter.

16. The revision petitioner recounted his woes and his financial difficulties, liabilities which he cannot avoid, namely, taking care of his parents. The respondent detailed the several expenses needed for giving a decent living to the child. Considering the broad spectrum of the statement and salary certificate and the relevant materials we found the quantum of maintenance granted by the Trial Court is little bit higher. Rs.7,000/- per month offered by the revision petitioner does not appear to be reasonable. It has to be enhanced. In the facts and circumstances, taking into account the difficulties of the father and child Rs.8,000/- per month would be fair and reasonable amount of maintenance.

17. In view of the foregoing, this revision is allowed in part. The monthly maintenance awarded by the Judge, Family Court, Tirunelveli in M.C.No.6 of 2016 is modified to the effect that the revision petitioner shall pay Rs.8,000/- per month as maintenance to his son from the date of filing the maintenance petition. He must clear the entire arrears within two weeks from the date of receipt of a copy of this order. In default, the respondent shall execute the order in accordance with law.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To:

The Judge,
Family Court,
Tirunelveli.

+1cc to M/s.T.Murugan, Advocate SR.No.47448

+1cc to M/s.K.Rajeswaran, Advocate SR.No.47329

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