



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 11.03.2021

Pronounced On : 30.03.2021

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C. (MD) .No.226 of 2017

M.P.Madhu Sadasivan : Petitioner / Respondent

Vs.

1.Rajamselvi

2.Minor Thrithiksha Madhu

3.Minor Akshayani Madhu : Respondents / Petitioners

(Minors 2 and 3 are represented by their mother/natural guardian first respondent)

PRAYER: Criminal Revision Petition has been filed under Section 397 and 401 of Cr.P.C, to call for the records and set aside the order dated 31.01.2017 made in M.C.No.22 of 2016 on the file of the Family Court, Tirunelveli.

For Petitioner : Mr.Ramesh,
for Mr.C.Muthusaravanan.

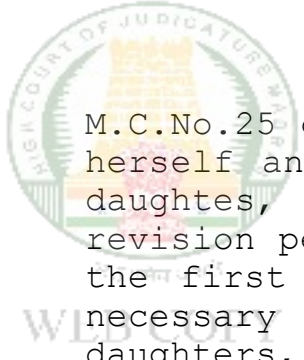
For Respondent : Mr.M.Saravanakumar

ORDER

The Criminal Revision Case is directed against the order passed in M.C.No.25 of 2016, dated 31.01.2017 on the file of the Family Court, Tirunelveli.

2.It is not in dispute that the marriage between the revision petitioner and the first respondent was solemnized on 05.11.2013 in Ganga Auditorim at Kollam and that due to their wed-lock, the respondents 2 and 3 were born to them. It is also not in dispute that subsequently there arose disputes and misunderstanding between them, that they are living separately and that the respondents 2 and 3 have been under the care and custody of the first respondent.

3.The first respondent for herself and for her minor daughters, by invoking Section 125 of Cr.P.C, filed the case in



M.C.No.25 of 2016, claiming monthly maintenance at Rs.20,000/- for herself and monthly maintenance at Rs.15,000/- each to her minor daughters, on the file of the Family Court, Tirunelveli. The revision petitioner has filed a counter statement by alleging that the first respondent was living in adultery and she was having necessary means and income to maintain herself and her minor daughters, disputed the liability. The learned Judge of Family Court, Tirunelveli, upon considering the evidence adduced and on hearing the arguments of the both sides, has passed the impugned order on 31.01.2017, directing the revision petitioner to pay monthly maintenance at Rs.10,000/- each to the respondents 2 and 3 and rejected the claim of the first respondent. Aggrieved by the said quantum of maintenance awarded to the respondents 2 and 3 minor daughters, the father has come forward with the present revision.

4. Whether the quantum of maintenance fixed at Rs.10,000/- each to the respondents 2 and 3 by the learned Judge of Family Court, Tirunelveli, in M.C.No.22 of 2016, dated 31.01.2017, is liable to be reduced ? is the point for consideration.

5. The learned counsel for the revision petitioner would contend that the trial Court failed to take note of the fact that the first respondent, who lives in adultery, has left the petitioner without any sufficient cause and that the trial Court has miserably failed to consider the unfortunate case of the first respondent that her father had lodged a complaint before the Commissioner of Police, Tirunelveli on the adulterous character of the first respondent. As already pointed out, the trial Court after considering the evidence adduced, has rejected the claim of maintenance put forth by the first respondent and admittedly, the first respondent has not challenged the finding of the trial Court, dismissing her claim. Since the first respondent has not challenged the order of the trial Court rejecting her maintenance claim and that the revision petitioner has preferred the above revision challenging the quantum of maintenance fixed by the trial Court, it is absolutely not necessary to probe the character and the conduct of the first respondent.

6. As rightly pointed out by the learned trial Judge, the petitioner/respondent in his chief examination would admit specifically that he has a duty to protect her minor daughters and that he is duty bound to give maintenance to both them. During cross examination, when a specific question was put to R.W.1 that he is liable to pay maintenance to his wife and two children, he would reply that he is ready to pay maintenance to his children, but not to his wife. More over, the revision petitioner has also not challenged the finding of the trial Court that he is liable to pay maintenance to his minor children. The only challenge is with



respect to the quantum of maintenance fixed by the trial Court. As already pointed out, the first respondent has claimed monthly maintenance at Rs.15,000/- each to the respondents 2 and 3 and the trial Court has awarded monthly maintenance at Rs.10,000/- each.

7.The learned counsel for the revision petitioner would contend that the petitioner had quit his job and he was job less for the past five months, that even when he was working as chef in the Ship, his job was only for a period of 9 months and there was no salary for the remaining three months period, that the trial Court has failed to consider the admission of the first respondent in her cross examination that she was earning a sum of Rs.30,000/- from home tuition and Rs.12,000/- from a School and she has a possibility for getting salary of Rs.70,000/- per month, that the trial Court has also failed to take note of the fact that a sum of Rs.52,00,000/- was transacted in the account of the first respondent for the last 10 months, that though the petitioner has to bear the expenses of his children as a biological father, the quantum fixed by the trial Court is disproportionate to his income and status and that the reasons given by the trial Court for fixing the quantum are not sound.

8.The revision petitioner in his chief examination would say that he is working as a Chief Chef in Merchant Navy Ship, that he is getting more than Rs.75,000/- as salary, and that he has to find out a new job. In cross examination, he would say that he left the job five months back. According to the revision petitioner, he is now working in a Maruti Suzuki show room and is getting net income of Rs.15,258/- per month. No doubt, he has produced the copies of the pay slip for the months of October 2020 to December 2020 in the additional typed set.

9.The learned counsel for the respondents would contend that the revision petitioner is owning several properties and that he is having necessary means and capacity to pay the maintenance as awarded by the trial Court. It is not in dispute that the respondents have filed an original petition in O.P.No139 of 2016 on the file of the Family Court, Kollam against the revision petitioner, his parents and friends, claiming various reliefs, including the reliefs to declare that 'A' schedule property absolutely belongs to the first respondent; to set aside the sale deed dated 25.04.2012 and to declare that the 'B' schedule property absolutely belongs to the first respondent and for permanent injunction, prohibitory injunction and for recovery of money, jewels, furniture and for maintenance and damages under Ex.P.8, whereunder, the first respondent has claimed ownership over the immovable properties shown in 'A' and 'B' schedule therein.



10. It is not in dispute that the revision petitioner has been defending the case before the Family Court, Kollam. No doubt, the first respondent in her evidence would admit that in Ex.P.8, she has stated that she was getting income of Rs.30,000/- from home tuition and Rs.12,000/- from Naveep School and that she has been visiting Chennai to write NET Exam and in case of completing the course, she would get average salary at Rs.70,000/- per month. She would further say that she had sold her 80 sovereigns of jewels given at the time of marriage and purchased the property in her favour and in favour of her husband and that the value of the property would exceed Rs.1 Crore. Moreover, as rightly pointed out by the learned trial Judge, the first respondent would admit that she was maintaining her two daughters for the past three years without anybody's help, that her paternal uncle aunt was helping her and that she is not having any difficulty to maintain her children. She would further admit that she was having Rs.52,00,000/- in her own bank account. But according to her, the said amount was belonging to her paternal uncle and would also admit that she alone had been handling the same.

11. Considering the means and wherewithal of both the revision petitioner and the first respondent, the trial Court has rightly fixed the quantum of maintenance at Rs.10,000/- each. The petitioner/ respondent in his evidence has nowhere whispered that he was not owning any property and that he was not having any means or income to pay the maintenance to his minor daughters. As rightly pointed out by the learned counsel for the respondents, though the impugned order was passed on 31.01.2017, he has only filed the pay slips for the months from October 2020 to December 2020 and he has not whispered anything about his employment and income for the period between the date of order till October 2020.

12. On considering the entire evidence adduced, it is very much clear that the first respondent as well as the revision petitioner are financially sound. Considering the above facts and circumstances of the case, considering the educational expenses of the respondents 2 and 3, status of the parties and the present economic scenario, the fixation of the monthly maintenance at Rs.10,000/- each for the respondents 2 and 3 by the trial Court cannot be found fault with and the amount awarded by the trial Court is reasonable and the same cannot be said to be excessive. Hence, this Court decides that the revision petition is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.



WEB COPY

5

13. In the result, the Criminal Revision Case is dismissed.
Parties are directed to bear their own costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

das

To

1. The Judge, Family Court, Tirunelveli.
2. The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C.MUTHU SARAVANAN, Advocate (SR-14598[F] dated
30/03/2021)

+1 CC to M/s.M.SARAVANAKUMAR, Advocate (SR-14982[F] dated
01/04/2021)

CRL.R.C. (MD) .No.226 of 2017
30.03.2021

VB (04/05/2021) 5P / 6c