



CRL.R.C.(MD).No.641 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 24.08.2022

Delivered on : 21.09.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.641 of 2021

and

CRL.M.P.(MD)No.7097 of 2021

Senthilkumar

: Petitioner

Vs.

1.Jeyapriya

2.Minor Prithika Shree

: Respondents

(Minor represented by her mother and
natural guardian/first respondent herein)

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C, to call for the entire records pertaining to the order passed by the Family Court, Tirunelveli, in M.C.No.44 of 2018, dated 11.08.2021 and set aside the same.

For Petitioner : Mr.R.Anand,

For Respondents : Mr.T.Selvan.



WEB COPY



CRL.R.C.(MD).No.641 of 2021

ORDER

The Criminal Revision Case is directed against the order passed in M.C.No.44 of 2018, dated 11.08.2021 on the file of the Family Court, Tirunelveli.

2. It is not in dispute that the marriage between the petitioner and the first respondent was solemnized on 10.07.2016 at Tirunelveli Junction Arulmigu Salaikumara Swamy Thirukovil and due to their wed-lock, they were blessed with a daughter, Prithikashree, on 13.06.2017.

3. It is also not in dispute that subsequently there arose disputes and misunderstanding between them; that they are living separately and that the second respondent has been under the care and custody of the first respondent.

4. The first respondent for herself and for her minor daughter, by invoking Section 125 of Cr.P.C, filed a case in M.C.No.44 of 2018, claiming monthly maintenance at Rs.25,000/- for herself and monthly maintenance at Rs.15,000/- to the second respondent, on the file of the Family Court, Tirunelveli.



CRL.R.C.(MD).No.641 of 2021

WEB COPY

5. The revision petitioner has filed a counter statement, disputing the liability and also the quantum of maintenance claimed by the respondents. The learned Judge of Family Court, Tirunelveli, upon considering the evidence and on hearing the arguments of both the sides, has passed the impugned order, dated 11.08.2021, directing the petitioner to pay monthly maintenance at Rs.10,000/- to the first respondent and Rs.7,500/- to the second respondent from the date of petition. Aggrieved by the said order, the husband has come forward with the present revision.

6. The petitioner and the first respondent, as usual in the matrimonial proceedings, has raised allegations and counter allegations against each other.

7. It is not in dispute that the first respondent has filed a petition in H.M.O.P.No.164 of 2020, for restitution of conjugal rights; that the petitioner has also filed a petition in H.M.O.P.No.123 of 2021, claiming divorce and that the said two petitions are pending on the file of the Family Court, Tirunelveli.

8. The case of the respondents is that since the marriage, the first respondent was subjected to cruelty by the petitioner and his family members;



CRL.R.C.(MD).No.641 of 2021

that they have sent the first respondent out of the matrimonial home, while she was pregnant and that the petitioner and his family members went to the extent of saying that since the birth time of the second respondent was not auspicious for his family, asked the first respondent to kill her child, else she will not be permitted to enter into their house.

9. As rightly pointed out by the learned counsel for the respondents, the petitioner has filed the H.M.O.P. for divorce, only after the filing of the H.M.O.P for restitution of conjugal rights by the first respondent.

10. No doubt, the learned counsel for the petitioner would submit that the first respondent alone had committed cruelty against the petitioner; that the first respondent alone has voluntarily deserted the petitioner and is residing along with her parents; that despite efforts taken by the petitioner to live together, the first respondent was adamant and was not willing to live with the petitioner in a cordial manner and that therefore, the first respondent is not entitled to claim any maintenance from the petitioner.

11. The learned counsel for the respondents would submit that though the petitioner has alleged that the first respondent alone has voluntarily deserted the



CRL.R.C.(MD).No.641 of 2021

petitioner and is residing with her parents, the petitioner has not produced any material or evidence to show that he had taken positive steps for bringing the respondents to the matrimonial home or that he had taken any legal proceedings for restitution of conjugal rights.

12. But on the other hand, the first respondent has filed a petition in H.M.O.P.No.164 of 2020 for restitution of conjugal rights and only in 2021, the petitioner has filed the divorce petition. The learned trial Judge, by observing that the petitioner during his cross examination has admitted that he is not willing to live with the respondents as he is fearing for his life and job, expressed his view that the Court is not inclined to accept the plea of the petitioner that the first respondent alone voluntarily deserted the petitioner and that therefore, the first respondent being the wife and the second respondent being the daughter, the petitioner is duty bound to maintain them.

13. Now turning to the quantum of maintenance, it is the specific case of the respondents that the petitioner is working in Tamil Nadu Electricity Board, Shannathupudukudi as Junior Engineer and is earning Rs.80,000/- per month; that the petitioner is owning house property and Nanja and Punja land; that his mother is receiving pension amount more than Rs.15,000/- per month; that the



CRL.R.C.(MD).No.641 of 2021

petitioner's sisters are all Government employers and that the first respondent is not having any property or income.

14. The defence of the petitioner is that the first respondent is a Master Degree holder in engineering and she was working as a lecturer in a private Engineering College and was getting attractive salary; that the first respondent has resigned her job only for the purpose of maintaining the maintenance case against the petitioner and that the petitioner is working as Junior Engineer, since 2011 and is getting salary of around Rs.20,000/- per month, after deduction of PF loan, Bank loan and other subscriptions.

15. It is pertinent to note that the first respondent in the affidavit filed with regard to the assets and liabilities, has stated that she has no job or income and she is not owning any movable and immovable properties in her name. The petitioner in his affidavit with regard to the assets and liabilities has stated that though his monthly salary is Rs.46,282/-, he is receiving only Rs.35, 253/- per month after deductions, that he has no property in his name and that he has to repay the loan amount of Rs.7 lakhs, which was borrowed by him for his sister's marriage.



CRL.R.C.(MD).No.641 of 2021

WEB COPY

16. No doubt, the first respondent is a possessing post-graduate degree in engineering, but admittedly, she is not employed as of now.

17. It is not the case of the petitioner that the first respondent is employed and is getting a good income. Moreover, the petitioner has not produced any material or evidence to show that the first respondent is employed and is earning a good income sufficient enough to take care of herself and her female child.

18. It is not in dispute that the mother of the petitioner is family pensioner; that the petitioner's two sisters were already married and settled at different places. As rightly observed by the learned trial Judge, they are not depending upon the income of the petitioner.

19.No doubt, as already pointed out, the petitioner has taken a stand that he had obtained loan of Rs.7 lakhs for his sister's marriage and he has been repaying the same. But, the trial Court relying on the evidence of the petitioner that he had taken a loan to the tune of Rs.5 lakhs and taking note of the contradictory statement of the petitioner with regard to the loan, came to the decision that the same cannot be believed.



CRL.R.C.(MD).No.641 of 2021

20. It is also not in dispute that the second sister of the petitioner is working in the Postal Department. The first respondent has produced the pay slip of the petitioner for the month of October-2019 under Ex.P.7 and the pay slip for the month of June-2019 under Ex.R.4.

21. It is evident from the records that the petitioner's take home salary is shown as Rs.24,232/- as per Ex.R.4. But in the Assets and Liabilities, the petitioner himself has stated that his monthly salary is Rs.46,282/- and he is receiving Rs.35,233/- per month, after deductions.

22. As rightly observed by the learned trial Judge, during the period between February 2019 and June 2019, the petitioner had applied loan from the Co-operative Thrift Society and for that loan, a sum of Rs.14,250/- has been subsequently deducted from the salary of the petitioner, which resulted in reduction of take home salary.

23. The learned counsel for the respondents would submit that the petitioner purposely obtained loan from the thrift society with sole intention to evade proper payment of maintenance to the respondents. Admittedly, the petitioner has not offered any reasons or explanation for the same.



CRL.R.C.(MD).No.641 of 2021

WEB COPY

24. As already pointed out, the learned Judge of Family Court, considering the social and economic status of the parties, requirement of the respondents and also the salary of the petitioner, fixed the monthly maintenance at Rs.10,000/- for the first respondent and Rs.7,500/- per month for the second respondent.

25. Considering the facts and circumstances of the case and also the status of the parties and the present economic scenario, the fixation of the monthly maintenance at Rs.10,000/- to the first respondent and Rs.7,500/- to the second respondent by Family Court cannot be found fault with and the same is very much reasonable and cannot said to be excessive.

26. The learned counsel for the petitioner would further contend that the trial Court has directed the petitioner to pay the maintenance amount awarded by it from the date of filing of the petition i.e., from 05.09.2018 and that the trial Court has not assigned any reasons or ground for passing the impugned order, directing the petitioner to pay maintenance amount from the date of petition.



CRL.R.C.(MD).No.641 of 2021

WEB COPY

27. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in **Jaiminiben Hirenghai Vyas & Another Vs Hirenghai Rameshchandra Vyas & another** reported in **2015 2 SCC 385**, wherein, the Hon'ble Apex Court has held that [Section 125](#) of the Cr.P.C., impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may chose either date, that it is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per [Section 354](#) (6) of the [Cr.P.C.](#), the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case.

28. The learned counsel for the petitioner has also relied on the decision of Hon'ble Supreme Court in **Rajnesh Vs. Neha and another** reported in **(2021) 2 Supreme Court Cases 324** and the judgment of this Court in **Mohamed Nisha Banu Vs. Mohamed Rafi and others** reported in **2021 SCC OnLine Mad 801**.



WEB COPY

29. The Hon'ble Apex Court in **Rajnesh 's** case, has directed all the Courts to award maintenance from the date of filing of the application for maintenance and the relevant passages are extracted hereunder :

“Discussion and Directions

109. The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance must be awarded. Even though a judicial discretion is conferred upon the Court to grant maintenance either from the date of application or from the date of the order in S. 125(2) Cr.P.C., it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 Cr.P.C. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.

110. In Shail Kumari Devi and Ors. v Krishnan Bhagwan Pathak, this Court held that the entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. In Bhuwan Mohan Singh v Meena⁶¹, this Court held that repetitive adjournments sought by



CRL.R.C.(MD).No.641 of 2021

the husband in that case resulted in delay of 9 years in the adjudication of the case. The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.

111. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependant spouse hampers their capacity to be effectively represented before the Court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the concerned Court.

.....

113. It has therefore become necessary to issue directions to bring about uniformity and consistency in the Orders passed by all Courts, by directing that maintenance be awarded from the date on which the application was made before the concerned Court. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.

.....

(d) Date from which maintenance is to be awarded



CRL.R.C.(MD).No.641 of 2021

131. We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B – IV above.

30. In **Mohamed Nisha Banu's** case, this Court by referring the decision in **Jaiminiben Hirenbbhai Vyas's** case and by relying the decision in Rajnesh 's case, has set aside the order granting maintenance from the date of order and granted maintenance from the date of application.

31. The above decisions are squarely applicable to the case on hand. As per the dictum laid down by the Hon'ble Supreme Court, assigning reasons for granting maintenance from the date of application or for granting reliefs only from the date of order is not at all necessary and that all the Courts were directed to award the maintenance from the date of application. Hence, the objections raised in this regard by the learned counsel for the petitioner is devoid of substance and the same is liable for rejection. Hence, this Court concludes that the Criminal Revision is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.



CRL.R.C.(MD).No.641 of 2021

WEB COPY

32. In the result, this Criminal Revision case is dismissed. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

21.09.2022

Index : Yes/No
Internet : Yes/No
das

To

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



WEB COPY



CRL.R.C.(MD).No.641 of 2021

K.MURALI SHANKAR, J.

das

CRL.R.C.(MD).No.641 of 2021
and
CRL.M.P.(MD)No.7097 of 2021

21.09.2022