



Crl.R.C.(MD).Nos.1094 & 963 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 02.12.2022

Delivered On: 22.12.2022

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).Nos.1094 & 963 of 2022
and Crl.M.P.(MD).No.11901 of 2022

Crl.R.C.(MD).No.1094 of 2022

1.Priyadharshini @ Lakshmipriya
2.Minor daughter S.Nainika ... Petitioners
(Minor daughter 2nd petitioner represented through her mother 1st petitioner)

Vs.

B.Soundharajan ... Respondent

PRAYER: This Criminal Revision Case is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records in M.C.No.12 of 2021 on the file of the Family Court, Tiruchirappalli, order dated 02.08.2022 and to enhance the monthly maintenance awarded by the Family Court and allow the Criminal Revision Petition.

For Petitioners : Mr.J.John

For Respondent : Mr.K.N.Guru

Crl.R.C.(MD).No.963 of 2022

B.Soundharajan ... Respondent

Vs.



Crl.R.C.(MD).Nos.1094 & 963 of 2022

1.Priyadharshini @ Lakshmipriya

2.Minor daughter S.Nainika

... Respondents

(Minor daughter 2nd Respondent represented through her mother 1st Respondent)

PRAYER: This Criminal Revision Case is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records relating to the order in M.C.No.12 of 2021 dated 02.08.2022 on the file of the Family Court, Tiruchirappalli, and set aside as illegal.

For Petitioner : Mr.K.N.Guru

For Respondents : Mr.J.John

COMMON ORDER

Crl.R.C.(MD).No.1094 of 2022 has been filed by the wife challenging the order passed by the trial Court in M.C.No.12 of 2021 and seeking enhancement of monthly maintenance amount, while Crl.R.C.(MD).No.963 of 2022 has been by the husband to the set aside the award of maintenance passed by the trial Court.

2.The facts in brief:

The marriage between the husband and wife took place on 04.09.2017 as per their religious customary rites at Salem. A child was born on 07.06.2018. After the above said marriage, the wife was treated cruelly demanding more dowry and money etc. Even during the pregnancy period, the husband received the jewellery and sold away stating that he intended to



start a business. Later they are stated to live separately in Trichy. At that time, the husband was doing business in Trichy and he was not regular in visiting the house and give money for family expenses. On 30.12.2019, the wife made a visit to the house of the husband and later she went to MM Auto mobiles where the father of the husband was working. At that time, she was assaulted and admitted in the hospital. So she lodged complaint on 08.06.2020 before Anathanapatti police station and also before Lalgudi Police Station on 17.06.2020. Even thereafter, she was also assaulted demanding dowry and money. The husband is earning more than Rs. 10,00,000/- by running two businesses. So claiming maintenance amount of Rs.60,000/- for the wife and Rs.20,000/- for minor child, the petition was filed by the wife.

3.That was resisted by the husband stating that only for three months they were living together. The wife did not attend the domestic work properly and used to pick up quarrel even for petty issue. Apart from this petition, the wife filed D.V.O.P.No.31 of 2020 before the Additional Mahila Court, Salem and filed H.M.O.P.No.57 of 2021 before the Family Court, Tiruchirappalli, seeking restitution of conjugal rights. He is receiving only Rs.25,000/- as monthly salary and he is maintaining his aged parents also.



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The wife is working in a private company and drawing salary of Rs.20,000/-.

4.By the order of the trial Court, the wife was awarded Rs.20,000/- and the child was awarded Rs.10,000/- as monthly maintenance. Challenging the above said order, Crl.R.C.(MD).No.963 of 2022 has been filed by the husband and Crl.R.C.(MD).No.1094 of 2022 has been filed by the wife and child seeking enhancement of monthly maintenance.

5.Heard both sides.

6.It appears that there is a short lived marriage between the husband and wife. They begot a female child, which is also admitted. What was the real reason for the dispute between the husband and wife is a matter for consideration by the Family Court before which the H.M.O.P. is pending. We need not go into this aspects, since the above said petitions have been filed by the wife seeking restitution of conjugal rights. At whose fault, the separation occurred is a matter for consideration in the above said proceedings. So this Court need not enter into the above said issue and only fixing of quantum will be taken for discussion.



7.The learned counsel for the husband would submit that the trial Court has passed an order by making a note upon the husband to the effect that he did not enter into the box to inform the Court about his income and in the affidavit, under schedule of Assets and Liabilities, his income is noted as Rs.25,000/-. Apart from that he is also an income tax assessee. The Income tax statement for the year 2018-2019 has also been filed and it shows that his income is Rs.3,25,900/- and taking adverse inference upon the non disclosure of the income, the trial Court has fixed the monthly income of the husband as Rs.60,000/-. It is further submitted that no contrary evidence was let in by the wife to dispute the above said statement. So the income that has been fixed by the trial Court is not proper.

8.The learned counsel for the wife submitted that apart from that the husband also admitted before the trial Court, where the H.M.O.P. is pending, that he is running two businesses. So the only point which arises for consideration is whether the income has been correctly fixed by the trial Court. No doubt that the husband has produced the statement of assets and liabilities and affidavit also. But that cannot be taken as a sole evidence for finding out the correct monthly income. The husband is not even come forward to disclose the company, in which, he is working.



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9.Perusal of records shows that he was running company called Sai Selfie Agencies in Salem. According to the wife, the husband is running two companies namely M.R.Creation Textile Export, Trichy and Priya creation textile Export, Salem. But, this fact is denied by the husband and he has produced only the income tax return with regard to the above Sai Selfie company.

10.With this difference of facts now let us go to the evidence of husband before the Family Court in H.M.O.P.No.391 of 2020, which is relied upon by the wife. During the course of cross examination, the husband admitted that he started a business called Priya Creations. It is admitted that he is running a textile business. With this evidence let us go to the Personal Information and Assets and Liabilities Statement filed by the husband in this matter. It is stated that before the marriage he was doing the business as Sai Selfie Agencies, after that he is working as Collection agent on commission basis. So getting Rs.20,000/- to Rs.25,000/- as commission. But he has not stated any thing about the garment company that was run by him and absolutely, there is no information with regard to the above said garment company. So as pointed out by the trial Court, the husband has not disclosed his correct business particulars and as well as the income particulars. So the husband now cannot find fault with the trial Court. In



such circumstances, the approximate monthly income that is fixed by the trial Court cannot be considered to be excessive or too low.

11.The learned counsel for the wife would rely upon the Judgment of this Court in the case of **Kavitha Vs. C.Prabhakar**, reported in **(2017) 4 MLJ (Crl.) 224** and would contend that the husband is suppressing the true income as noted above. Per contra, the learned counsel for the husband rely upon the judgment of the Honourable Supreme Court in **Rajnesh Vs. Neha and another** reported in **(2021) 2 SCC 324** for the purpose of argument that since he has filed the Assets and Liabilities Statement, no adverse inference ought to have been drawn by the trial Court.

12.Whatever, it may be, even factually, as I mentioned earlier, the husband has not disclosed the correct income and as well as the business particulars. So in such event, as mentioned above, the approximate income fixed by the trial Court cannot be found fault. It is brought to be sustained.

13.Considering the relative decision of the purpose and as well as the income criteria the maintenance amount that was fixed by the trial Court cannot be found to be excessive or luxuries in nature. So the maintenance



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amount awarded by the trial Court, by the order, dated 02.08.2022, in M.C.No.12 of 2021, on the file of the Family Court, Tiruchirappalli, is liable to be confirmed and accordingly, confirmed. In respect of the enhancement issue also, absolutely, I find no reason to enhance the maintenance amount. Therefore, both revision petitions are liable to be dismissed and accordingly, **dismissed.** Consequently, connected miscellaneous petition is closed.

22.12.2022

Index : Yes / No
Internet : Yes / No
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To

1.The Judge, Family Court, Tiruchirappalli.



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