



Crl.R.C.(MD).No.36 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.09.2023

Delivered on : 02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). No.36 of 2023

and

Crl.M.P(MD). No.563 of 2023

Vijayakumar

... Petitioner/Respondent

Vs.

Ashalatha

... Respondent/Petitioner

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the order made in M.C.No.37 of 2019 dated 01.09.2022 passed by the Learned Family Court, Thanjavur and set aside the same by allowing this Revision.

For Petitioner : Mr.A.Joel Paul Antony

For Respondent : M/s.S.Ashalatha,
Party-in-Person

ORDER

The petitioner has filed this petition against the impugned maintenance award dated 01.09.2022 passed in M.C.No.37 of 2019, on the file of the learned



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Judge, Family Court, Thanjavur, wherein, the Court below directed to pay monthly maintenance of Rs.10,000/- to the respondent/wife.

2. The case of the respondent in M.C.No.37 of 2019

The marriage between her and the revision petitioner was solemnized on 16.02.2012. Within one month from the date of marriage, the petitioner and his family members made harassment and caused cruelty to the respondent. The respondent is a graduate and she completed Teacher Training, she tolerated the cruelty caused by the petitioner and his family members. But, the petitioner and his family members caused disturbance to her on account of bringing insufficient dowry. Hence, the respondent left the matrimonial home and living with her parents. That being so, the petitioner filed HMOP.No.122 of 2014 on the file of Additional Sub Court, Kumbakonam, to seek divorce. In the said case, he obtained *ex-parte* divorce by giving false address. On knowing that, the respondent has taken steps to set aside the same through the legal aid counsel. The petitioner is having number of agricultural properties in the cauvery delta with electric pump service, a two story building at Sathyamangalam, a big house at Vallam having annual income of more than Rs.11 lakhs. The respondent is living with her parents without any means for her livelihood and hence, she filed



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this maintenance claim petition claiming monthly maintenance of Rs.10,000/- and Rs.5,000/- as a festival expenditure and Rs.5,000/- cost of the proceedings.

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3.The case of the petitioner/husband in M.C.No.37 of 2019

The petitioner filed counter by denying the allegation and specifically stated that the respondent's allegation that he and his family members caused cruelty to her by demanding additional dowry is not correct. The respondent herself left the matrimonial home and she never agreed for reunion. In the said circumstances, he filed the HMOP.No.120 of 2014 for divorce and the same was allowed. Thereafter, he married another girl and through the said marriage, he got a child. She is working as a teacher and earning sufficient monthly income to meet her livelihood. In view of the above facts, she is not entitled to claim maintenance.

4. To prove the maintenance claim, the respondent examined herself as P.W.1 and marked the documents Ex.P.1 to Ex.P.7. The petitioner examined himself as R.W.1 and examined R.W.2 & R.W.3 and marked Ex.R.1 & Ex.R.2. The witness document C.W.1 also marked. The learned trial Judge, on available evidence and on the basis of the submission made by the learned counsel for the



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petitioner and the learned counsel for the respondent, allowed the maintenance petition and granted maintenance of Rs.10,000/- to the respondent. Challenging the same, the petitioner/husband filed this revision.

5. The learned counsel for the petitioner made the following submissions:

5.1. The Court below failed to consider that the respondent never proved the income of the petitioner by producing the necessary evidence. The Court below erroneously granted maintenance amount only on the basis of the evidence of P.W.1.

5.2. The Court below failed to see that the first respondent was working as Teacher and earning sufficiently to maintain herself.

5.3. The Court below failed to consider that the respondent's maintenance claim is not maintainable after the divorce decree.

6.1. The respondent appeared in person and submitted that the petitioner filed H.M.O.P.No.120 of 2014 seeking divorce by giving false address of the respondent and obtained *ex-parte* decree. On knowing the same, she filed



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ex-parte set aside petition through the Legal Aid Counsel. From the conduct of the petitioner, this Court can easily presume the intention of the petitioner to enter the remarriage. Hence, the petitioner's plea that the maintenance claim petition is not maintainable on the account of divorce granted by the competent Court is not correct.

6.2. The petitioner has not disputed the existence of the lands and houses. Hence, granting of Rs.10,000/- towards monthly maintenance is not liable to be interfered.

6.3. The learned trial Judge, considering the fact that the petitioner entered into second marriage and got child and he maintained them through the income of the agricultural lands and houses, fixed the monthly maintenance of Rs. 10,000/- and hence, the same is to be confirmed.

6.4. Further, as alleged by the petitioner the respondent is not working as a teacher and the petitioner never proved the income of the respondent. Hence, she seeks dismissal of this revision.



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7. This Court considered the rival submissions made on either side and perused the materials available on record.

8. There is no dispute regarding the relationship between the parties. Marriage between the petitioner and the respondent is admitted. The petitioner made a plea that he obtained *ex-parte* divorce and hence, she is not entitled to maintain this petition. The said plea is not accepted. Even divorcee is entitled to claim maintenance till her remarriage as per Section 125 of Cr.P.C., The Hon'ble Supreme Court in ***Swapan Kumar Banerjee v. State of W.B.***, (2020) 19 SCC 342 interpreted the Section 125 of Cr.P.C., and held that even divorcee is entitled to claim maintenance.

“7. No doubt, as urged by Mr Debal Banerjee, Explanation II to Section 125 CrPC by deeming fiction includes a divorced woman to be a wife and, therefore, a woman who has been divorced by her husband can still claim maintenance under Section 125 CrPC. The question is how we should read the provisions of sub-section (4) in this regard, especially when we deal with those women, against whom a decree for divorce has been obtained on the ground that they have deserted their husband. Once the relationship of marriage comes to an end, the woman obviously is not under any obligation to live with her former husband. The deeming fiction of the divorced wife being treated as a wife can only be read for the limited purpose for grant of maintenance and the deeming fiction cannot be stretched to the illogical extent that the divorced wife is under a



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compulsion to live with the ex-husband. The husband cannot urge that he can divorce his wife on the ground that she has deserted him and then deny maintenance which should otherwise be payable to her on the ground that even after divorce she is not willing to live with him. Therefore, we find no merit in the contention of Mr Debal Banerjee.”

9. In this case, the respondent specifically alleged that the petitioner obtained *ex-parte* divorce by furnishing the false address. She also filed petition to set aside the *ex-parte* decree through the legal aid counsel. In the said circumstances and also the law laid down by the Hon'ble Supreme Court, this Court without any hesitation declines to accept the contention of the petitioner that the respondent is not entitled to get maintenance from him on the account of the divorce granted by the competent Court.

10. Even though, the petitioner appeared and he examined two witnesses, the evidence is not in support of the petitioner's claim that the respondent is working as a teacher and earning sufficiently. There is no evidence to prove the said fact and hence, the plea of the petitioner that the respondent is earning sufficiently to meet her livelihood is not proved accordingly. It is well settled that the husband must prove the income of the wife. In this aspect, it is relevant to note that the judgment of the Hon'ble Supreme Court Judgment reported in the



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case of **Swapan Kumar Banerjee v. State of W.B., (2020) 19 SCC 342**

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“10. The next issue raised was that the wife being a qualified architect from a reputed university i.e. Jadavpur University, Calcutta would be presumed to have sufficient income. It is pertinent to mention that as far as the husband is concerned, his income through taxable returns has been brought on record which shows that he was earning a substantial amount of Rs 13,16,585 per year and on that basis Rs 10,000 per month has been awarded as monthly maintenance to the wife. No evidence has been led to show what is the income of the wife or where the wife is working. It was for the husband to lead such evidence. In the absence of any such evidence no presumption can be raised that the wife is earning sufficient amount to support herself.”

11. The learned trial Judge, after considering the vast extents of the agricultural lands and the number of houses and also taken into the fact that he is managing the second wife and the child, correctly fixed monthly the maintenance amount as Rs.10,000/-. Hence, this Court finds no perversity in the finding of the learned trial judge to grant maintenance of Rs.10,000/- to the respondent.

12. The Hon'ble Supreme Court laid the following guidelines in the case of **Rajnesh v. Neha, reported in (2021) 2 SCC 324** to determine the monthly maintenance:

- “1. Status of the parties.*
- 2. Reasonable wants of the claimant.*



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- 3. The independent income and property of the claimant.*
- 4. The number of persons, the non-applicant has to maintain.*
- 5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.*
- 6. Non-applicant's liabilities, if any.*
- 7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.*
- 8. Payment capacity of the non-applicant.*
- 9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.*
- 10. The non-applicant to defray the cost of litigation.*
- 11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act.”*

13. The learned trial Judge considered the above aspect and correctly fixed the monthly maintenance of Rs.10,000/- to the respondent, on the basis of the oral and documentary evidence. Since, in all aspect, the learned trial Judge correctly decided the entitlement of the respondent to claim maintenance from the petitioner and reasonably fixed the monthly maintenance of Rs.10,000/- to the respondent by considering the income source of the respondent and needs of the respondent and social economic status of the parties and present day cost of living, this Court does not find any ground to differ with the findings of the learned trial Judge.



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14. Accordingly, the order passed by the learned Family Court, Thanjavur, in M.C.No.37 of 2019, dated 01.09.2022, is hereby confirmed and the Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is closed.

02.11.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

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



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K.K.RAMAKRISHNAN, J.

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**Pre-delivery Order made in
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