



CrI.R.C.(MD).No.239 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :19.12.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.RC(MD).No.239 of 2019
and
CrI.M.P(MD).No.5980 of 2019

P.Rajagopal

... Petitioner

Vs.

1. R.Geetha

...Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the order made in M.C.No. 138 of 2015 dated 14.12.2020, on the file of the Family Court, Trichy and set aside the same.

For Petitioner : Mr.P.R.Prithiviraj

For Respondents : Mr.K.S.Kathiravan



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ORDER

The Criminal Revision Case is directed against the order passed in M.C.No.138 of 2015, dated 14.12.2020 on the file of the Family Court, Trichy and set aside the same.

2.The marriage between the petitioner and the respondent was held on 12.06.1994. During their wedlock on 28.05.1995, a female child was born to them. Thereafter, due to some marital discord, they were separated. Therefore, the petitioner herein filed a petition for divorce in H.M.O.P.No.12 of 1997 and an ex-parte order was granted on 14.06.2000. Thereafter, the respondent filed a petition claiming maintenance before the Family Court, Trichy, in M.C.No.138 of 2015.

3.To prove the claim of maintenance, the first respondent namely wife examined herself as P.W.1 and marked Ex.P1 to P.16. The petitioner namely husband examined himself as R.W.1 and marked Ex.R1 to R19. The



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learned trial Judge considered the evidence and granted maintenance of Rs. 10,000/- per month to the respondent. Challenging the same, the petitioner filed this revision case.

4. The learned counsel appearing for the petitioner submitted that the petitioner got divorce on 14.06.2000. In view of the divorce granted by the competent Court, the petitioner is not entitled to claim maintenance.

5. The learned counsel appearing for the respondent submission that the Hon'ble Supreme Court in the case of **Swapan Kumar Banerjee v. State of W.B.**, reported in **(2020) 19 SCC 342** has specifically held that even though divorce was granted on desertion, wife is entitled to get maintenance. Hence, he seeks for dismissal of this case.

6. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.



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7.The sum and substance of the submission of the petitioner is that there is desertion on the part of the wife and hence, he is not liable to pay maintenance. The said submission is against the Law laid down by the Honourable Supreme Court in the case of **Swapan Kumar Banerjee v. State of W.B.**, reported in **(2020) 19 SCC 342**. The respondent has not remarried. As per Section 125 of Cr.P.C., wife includes divorcee and she is entitled to claim maintenance till her remarriage. The Hon'ble Supreme Court discussed the same in detail in the above judgment and has held that even if divorce was granted on the ground of desertion, there is no bar to claim the monthly maintenance. The relevant paragraph of the judgment is as follows:

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



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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 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.

8.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.*
- 3. The independent income and property of the claimant.*
- 4. The number of persons, the non-applicant has to maintain.*



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- 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.”*

9. In all aspects the learned trial Judge has correctly decided the entitlement of the respondent to claim maintenance from the petitioner, and reasonably fixed monthly maintenance of Rs.10,000/- to the respondent considering the earning capacity of the petitioner and needs of the respondents and socio economic status of the parties and present day cost of living and this Court does not find any ground to differ with the findings of the learned trial Judge.



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10. Accordingly, this Criminal Revision Case is dismissed and the maintenance order passed in M.C.No.138 of 2015, dated 14.12.2020, by the learned Judge, Family Court, Trichy, is hereby confirmed.

19.12.2023

NCC :Yes/No

Index :Yes/No

Internet :Yes/No

sbn

Note: Issue order copy on 05.02.2025.

To

1. The Judge,
Family Court,
Trichy
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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