



CrI.R.C.(MD).No.351 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 26.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.RC.(MD).No.351 of 2022

and

CrI.M.P.(MD).No.4470 of 2022

1.Mrs.Sweetha

2.Minor Beatriz Shannon

... Petitioners

Vs.

Bharathiraja

... Respondent

PRAYER : Petition filed under Section 397 r/w 104 of Cr.P.C., to call for the records and set aside the order in M.C.No.27 of 2019 dated 16.12.2021 passed by the learned Family Court, Tirunelveli with regard to the quantum of Maintenance and enhance the same.

For Petitioners :Mr.S.M.A.Jinnah

For Respondent :Mr.I.Pinayagosh



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ORDER

The petitioners have filed this petition to enhance the monthly maintenance of Rs.17,500/- dated 16.12.2021 passed in M.C.No.27 of 2019, by the learned Judge, Family Court, Tirunelveli to Rs.40,000/- per month.

2.The marriage between the first petitioner and the respondent took place on 18.05.2017. Due to their wed lock, one male child namely the second respondent was born to them on 20.02.2018. In the meantime, on 16.02.2018 the respondent contacted the first petitioner over phone and demanded dowry of Rs.10,00,000/-(Rupees Ten Lakhs). Hence, the first petitioner started living at her parental house at Rahmathnagar, Palayamkottai. Thereafter, the first petitioner lodged a complaint against the respondent and his family members before the jurisdictional police station and a case has been registered in Crime No.4 of 2019 for offences under Sections 498(A), 294(b) & 506(ii) of IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Women, Act. In the meantime, the first petitioner filed an application under Section 12 of the Domestic Violence Act in D.V.O.P.NO.08 of 2018 before the learned Judicial Magistrate No-I,



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Tirunelveli against the respondent and his family members. In the said D.V.O.P., an interim maintenance of Rs.5,000/- per month was granted in favour of the first petitioner. Thereafter, the petitioners filed an application under Section 125 of CR.P.C., in M.C.No.27 of 2019 for getting monthly maintenance. The said maintenance case was allowed on 16.12.2021, in part and the respondent was directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) per month and also directed to deduct Rs.5,000/- which has already been granted by the trial Court as interim maintenance in D.V.O.P.No.8 of 2018 and Rs.7,500/- (Rupees Seven Thousand and Five Hundred Only) to the second petitioner. Aggrieved over the maintenance amount granted by the trial Court in M.C.No.27 of 2019 dated 16.12.2021, the petitioners have filed this Criminal Revision Case before this Court for enhancement of the maintenance award.

3. The learned counsel for the petitioner submitted that as per Ex.P6, Ex.P.8, Ex.P.9, Ex.P.10, the monthly income of the respondent is more than Rs.1,36,790/- and without properly considering the cost of living, social economic status of the parties, the learned trial Judge awarded only a



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sum of Rs.7,500/- to the second petitioner and Rs.10,000/- to the first petitioner. Therefore, the amount granted by the learned trial Judge is very low and hence he seeks for enhancement of the amount.

4.The learned counsel for the respondent submitted that even though the respondent has shown his monthly income as Rs.1,36,790/-, there was a loan repayment and other deduction under Ex.P.10 and there was a cancellation of settlement deed in respect of the property covered under Ex.P.6, Ex.P.7 and Ex.P.8 and therefore, the learned trial Judge's finding that there are properties for the respondent and the respondent's income is more than Rs.1,36,790/- per month is not in accordance with law. Therefore, he seeks for dismissal of this Criminal Revision Case.

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

6. Both the parties have admitted their relationship and due to the dispute a proceeding under Section 12 of the Domestic Violence Act is



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pending in D.V.O.P.No.8 of 2018. In the said proceedings, an interim maintenance of Rs.5,000/- was granted to the first petitioner. Pending the said proceedings, she filed a present claim petition under Section 125 of Cr.P.C., to claim monthly maintenance of Rs.20,000/- to the first petitioner and Rs.20,000/- to the second petitioner.

7.The learned trial Judge relied Ex.P6, Ex.P7, Ex.P8, Ex.P9 and Ex.P10 and found that the respondent has sufficient income. As per the finding of the learned trial Judge, the monthly income is more than Rs. 1,36,790/-. The Hon'ble Supreme Court laid the following guidelines in the case of ***Rajnish 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.

5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.



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- 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.”*

From the above principle laid down by the Hon'ble Supreme Court, while fixing the quantum, the economic and social status of the parties are to be considered. In this case, the respondent is working as a Senior Associate in the cognizant Technology and he is earning more than Rs.1,36,790/- per month. Both are well educated and hence, proper education is to be given to the second petitioner. The quantum of maintenance is not for mere survival and the same is meant for meaningful livelihood. Therefore, the Hon'ble Supreme Court directed to grant adequate maintenance to the wife and the children so that they can live with dignity as they would have lived in her



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matrimonial home and the same is fortified by the Hon'ble Supreme Court in ***Shamima Farooqui v. Shahid Khan, (2015) 5 SCC 705 at page 715*** has held as follows:

14....It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to



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grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.

(Emphasized supplied)

8. In this case, the respondent has not produced any evidence to prove the independent income source of the first petitioner. The petitioners have to depend on the maintenance amount. Hence, considering the social status and economic conditions of the petitioners and the respondent, the



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grant of maintenance of Rs.17,500/- is not proportionate. The award of monthly maintenance of Rs.17,500/- is unreasonable one. Hence, this Court is inclined to enhance the monthly maintenance amount of the first petitioner from Rs.10,000/- to Rs.17,500/- and monthly maintenance of the second petitioner from Rs.7,500/- to Rs.12,500/-

9. Accordingly, this Criminal Revision Case stands allowed in part in the following terms:

(i) The order passed by the learned Judge, Family Court, Tirunelveli, in M.C.No.27 of 2019, dated 16.12.2021 is partly set aside.

(ii) The award amount granted in M.C.No.27 of 2019 in favour of the first petitioner is hereby enhanced to Rs.17,500/- from Rs.10,000/-.

(iii) The award amount granted in M.C.No.27 of 2019 in favour of the second petitioner is hereby enhanced to Rs.12,500/- from Rs.7,500/-.

(iv) The enhanced amount is hereby directed to be paid from the date of filing of this Criminal Revision Case, ie, on 29.03.2022.

(v) Interim maintenance amount of Rs.5,000/- granted in favour of the first petitioner in D.V.O.P.No.8 of 2018, by the learned Judicial



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Magistrate, Tirunelveli, is liable to be deducted from the enhanced maintenance amount granted in favour of the first petitioner.

(vi)The remaining portion of the order in M.C.No.27 of 2019 is hereby confirmed.

Consequently, connected miscellaneous petition is closed.

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NCC :Yes/No

Index :Yes/No

Internet :Yes/No

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