



Crl.R.C.(MD)No.317 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 19.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD)No.317 of 2021

and

Crl.M.P(MD)No.3127 of 2021

Suresh

... Petitioner/Respondent

Vs.

Packialakshmi

... Respondent/Petitioner

Prayer: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records in M.C.No.17 of 2018 from the file of the Family Court, Dindigul and to set-aside the order of the maintenance passed on 20.02.2020 in M.C.No.17 of 2018 on the file of the Family Court, Dindigul.

For Petitioner : Mr.S.A.Ajmalkhan

For Respondent : Mr.M.P.Senthil



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ORDER

The petitioner is the husband challenging the maintenance granted in favour of the wife in M.C.No.17 of 2018 on the file of the Family Court, Dindigul.

2. The marriage between the petitioner and the respondent was solemnised on 01.06.2001. They were living in a rental home. Due to the wedlock, they have two children. The respondent started taking liquor and would come fully drunk and though advised, he never gave up the drinking habit even after the children were born. He used to drink during day time also due to which he lost his job in the private institution. He also harassed her demanding Rs.10 lakhs for purchasing a house and also ill-treated her. Hence, she returned to her parental home with her children. The husband gets income from ancestral property nearly about Rs.2 lakhs per month. Hence, she filed a maintenance petition in M.C.No. 17 of 2018 claiming maintenance for herself and the children.



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3. The learned trial Judge, considering the evidence of the petitioner/wife and Ex.P1 and Ex.P2 and disbelieving the evidence of the husband, on the ground that he did not subject himself for the cross-examination, granted maintenance of Rs.10,000/- per month to the petitioner.

4. The learned counsel for the petitioner/husband submitted that the respondent/wife's family also is running a business of financing and getting income to the tune of more than Rs.3,00,000/-. The same was not considered by the learned trial Judge. The learned counsel for the petitioner further submitted that the respondent, namely, wife has not adduced any evidence to prove the income of the petitioner/husband. The petitioner is a disabled person and he has no source of income. His only source of income is from the ancestral property and hence, the award of maintenance granted by the learned trial Judge is not in accordance with law and hence, he seeks for dismissal of the same.

5. The learned counsel for the respondent/wife submitted that the learned trial Judge has considered the available evidence and also the



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admitted the fact that the petitioner namely, husband's family has more ancestral properties and from that they are getting income.

6. The learned counsel for the petitioner submitted that the trial Judge gave a finding on the basis of the evidence and granted Rs.10,000/- to the respondent. Further, he stated that the male child is with the petitioner and the female child is with the wife. Considering the above circumstances, the award of Rs.10,000/- per month is reasonable one.

7. This Court has considered the above submission and also the impugned order and records filed before the trial Court.

8. There is no dispute relating to the relationship between the parties and also there is no dispute regarding the birth of two children. The male child is with his father, namely, husband of the first respondent. The female child is with the mother and also the female child is a minor. Even though there was no evidence to prove the source of income of the petitioner, the learned trial Judge considered Ex.P2 and other documents,



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found that there are some ancestral properties and the petitioner got sufficient income through the said property. On the basis of the findings, he granted Rs.10,000/- to the respondent/wife. The said finding is on analysing the evidence. In the said circumstances, this Court is not inclined to interfere with the quantum of maintenance.

9.The learned counsel for the petitioner submitted that the wife is also having sufficient means from the family properties. But to prove the same, no evidence was produced. Hence, mere pleading without evidence is not proof of fact. In this aspect, it is relevant to note the judgment of the Hon'ble Supreme Court reported in the case of ***Swapan Kumar Banerjee Vs State of West Bengal***. reported in ***(2020) 19 SCC 342:-***

10.....No evidence has been led to show what is the income of the wife or where the wife is working. It is 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.



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10. Hence, this Criminal Revision Petition is dismissed. No Costs.

Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
PJI/sbn



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



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K.K.RAMAKRISHNAN, J.

PJL/vsg

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