



CrI.R.C.(MD).No.320 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 20.07.2023
Pronounced On : 02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Pandiyarajan

... Petitioner

Vs.

1.Manimegalai @ Sawithri

2.Minor Pugalini

... Respondents

PRAYER : Petition filed under Section 397 r/w 104 of Cr.P.C., to call for records and set aside the order in M.C.No.21 of 2018 on the file of the Family Court, Srivilliputhur dated 30.01.2023.

For Petitioner :Mr.S.A.Ajmalkhan

For Respondents :Mr.M.M.Jothi Basu



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ORDER

This Criminal Revision Case has been filed against the impugned order in M.C.No.21 of 2018, on the file of the Family Court, Srivilliputhur dated 30.01.2023.

2. The brief facts of this case is that the petitioner, while working as a Driver in the Police Department at Chennai, married the first respondent on 27.11.2014. Out of their wedlock, the second respondent was born on 04.11.2015. Due to some matrimonial dispute between the first respondent and the petitioner, the first respondent left the matrimonial home along with her child and was living with her parents. In the mean time, petitioner filed H.M.O.P.No.174 of 2015 seeking the relief of divorce. Pending the same, the first respondent filed a petition in H.M.O.P.No.131 of 2016 seeking the relief of restitution of conjugal rights.

3. After a full-fledged trial, the Court below has dismissed the petition filed by the petitioner and allowed the petition filed by the first



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respondent. Thereafter, the first respondent filed a maintenance case against the petitioner in M.C.No.21 of 2018, on the file of the Family Court, Srivilliputhur seeking maintenance under Section 125 Cr.P.C., and the same was allowed in part and a sum of Rs.3,000/- was awarded to the first respondent and a sum of Rs.5,000/- was awarded to the second respondent. Aggrieved over the same, the petitioner herein has filed this Criminal Revision Case before this Court.

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

(i) The petitioner is working in the police Department and suffering from varicose vein and hence, he was unable to attend duty. Therefore, the Department initiated the disciplinary proceedings stating that he deserted from the office for 2 ½ years. The said proceedings ended with a punishment and he was reinstated as a new entrant. On the basis of the order, he attained the permanent status only on 01.09.2022. Hence, he claims that he incurred huge medical expenditure and also continuously incurring medical expenditure. Therefore, he has no sufficient means to pay



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the maintenance amount.

(ii)The first respondent is working as a temporary clerk in the school and hence, she is sufficiently earning to maintain herself and the child.

(iii)The petitioner's father suffered heart attack and he has undergone an operation and he is duty bound to maintain his father also.

(iv)The learned trial Judge, without considering the above aspects properly, granted maintenance. Hence, he seeks to allow this case.

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

(i)The petitioner's father is a retired police officer and he is receiving pension. The parents of the petitioner is living with their pension amount and they don't require any amount from the petitioner for their expenses.

(ii)Even after dismissal of the divorce petition and order of the restitution of the conjugal right, the petitioner never inclined to live with the respondent.



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(iii)The petitioner got permanent status in his employment and getting salary as equal to a permanent staff.

(iv)The learned trial Judge, after taking consideration of the income of the first respondent, has granted a sum of Rs.3,000/- only as a monthly maintenance to the first respondent and a sum of Rs.5,000/- to the second respondent. Considering the present day cost of living and the education expenditure, the total award amount of Rs.8,000/- per month is not on higher side.

(v)The learned trial Judge upon proper appreciation of evidence and documents, granted only a sum of Rs.8,000/- and there was no perversity in the said order. Therefore, he seeks for dismissal of this case.

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

7. There is no dispute that the marriage between the petitioner and the first respondent took place on 27.11.2014 and out of their wedlock, a child was born to them. Thereafter, some matrimonial dispute arose between



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the parties and both of them have filed the number of/different proceedings before the Family Court. The divorce petition filed by the petitioner was dismissed and the petition filed by the first respondent for the relief of restitution of conjugal rights was allowed.

8. Considering the evidence of the petitioner and perusal of the records, it is clear that the petitioner is a permanent staff from 01.09.2022. It is an admitted fact that the first respondent is also working as a Clerk in the school and thereby earning a sum of Rs.7,000/- per month. The child/second respondent is studying in a private school. The school fees would come around Rs.33,000/- and the bus fees would come around Rs.12,000/-. Considering the above circumstances, the learned trial Judge granted a sum of Rs.8,000/- as a total monthly maintenance to the respondents i.e, Rs.3,000/- was granted towards the monthly maintenance of the first respondent and Rs.5,000/- for the second respondent. It is a well settled principle that even in the case, where wife is working, the maintenance claim petition could not be dismissed. The Hon'ble Supreme Court in ***Rajnesh Vs. Neha*** in ***CrI.A.No.730 of 2020*** has held as follows:



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90. *The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:*

90.1. *In Shailja v. Khobbanna [Shailja v. Khobbanna, (2018) 12 SCC 199 ; See also the decision of the Karnataka High Court in P. Suresh v. S. Deepa, 2016 SCC OnLine Kar 8848 : 2016 Cri LJ 4794 (Kar)] , this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. [Chaturbhuj v. Sita Bai, (2008) 2 SCC 316] Sustenance does not mean, and cannot be allowed to mean mere survival. [Vipul Lakhanpal v. Pooja Sharma, 2015 SCC OnLine HP 1252]*

90.2. *In Sunita Kachwaha v. Anil Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715] the wife had a postgraduate degree, and was employed as a teacher in Jabalpur.*



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The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

90.3. *The Bombay High Court in Sanjay Damodar Kale v. Kalyani Sanjay Kale [Sanjay Damodar Kale v. Kalyani Sanjay Kale, 2020 SCC OnLine Bom 694] while relying upon the judgment in Sunita Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715] , held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.”*

The learned trial Judge has correctly granted maintenance of Rs.3,000/-to the first respondent by taking into account of her salary of Rs.7,000/-.

9. The admitted position is that the petitioner's father is a pensioner and receiving pension to maintain himself. Hence, the case of the petitioner that he is bound to maintain his father does not arise.



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10. Therefore, this Court does not find any merits in the submission of the learned counsel for the petitioner and there is no reason to interfere with the order passed by the learned trial Judge in granting total monthly maintenance amount of Rs.8,000/- to the respondents by taking into account the present day cost of living and the educational expenditure of the child. The Hon'ble Supreme Court has repeatedly held that the revisional Court has no jurisdiction to interfere with the quantum of maintenance awarded by the trial Court without finding any perversity. Therefore, this Court does not find any infirmity or perversity in the order of the trial Court in awarding a sum of Rs.8,000/- to the respondents as maintenance.

11. For all the reasons, this Criminal Revision Case fails and accordingly, the same is dismissed.

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NCC :Yes/No
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