



Crl.R.C.(MD).No.686 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

Crl.R.C(MD).No.686 of 2023 and
CrL.M.P(MD).No.9590 of 2023

K.Sivanandham

... Petitioner

Vs.

1.S.Sudha
2.Minor Sri. Sasiram
3.Minor Sithu Maniram
4.Minor Oshanth
5.Minor Osana
petitioners 2 to 5 rep. by their
mother and Natural Guardian
1st respondent herein.

... Respondents

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401
Cr.P.C., to call for entire records and set aside the order passed in
M.C.No.05 of 2022, dated 23.11.2022 on the file of the Family Court,
Thanjavur.

For Petitioner : Mr.A.P.G. Ohm Chairma Prabhu

For respondents : Mr. K. Saravanan



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ORDER

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The revision petitioner, who is the husband of the first respondent, filed this revision challenging impugned maintenance order, dated 23.11.2022 passed in M.C.No.5 of 2022 on the file of the Family Court, Thanjavur.

2. The respondent / wife and their children filed the M.C.No. 5 of 2022 on the file of the Family Court, Thanjavur claiming maintenance amount of Rs.20,000/- and yearly expenditure of Rs.80,000/- including the medical expenditure etc., It is the case of the respondent that the marriage took place on 13.03.2005 and out of marriage, four children were born. Due to the some dispute between the respondent and petitioner, the petitioner left the matrimonial home. More particularly, the petitioner alleged to have contact with the another woman which impuled the respondent to depart the company of the petitioner in the month of November, 2019. Thereafter, due to her inability, she preferred the complaint to the Chief Minister's Cell and the same was forwarded to the Valangaiman Police Station. On enquiry, the petitioner undertook to live with the respondent. He also refused to pay



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the maintenance. The petitioner is working as a Post Master and earned the salary of more than Rs.40,000/-, but, the respondent has no source of income. So, she unable to maintain herself and children. In consequence, she filed the maintenance petition in M.C.No.5 of 2022 on the file of the Family Court, Thanjavur.

3. The respondent filed the counter denying the allegation made in the Maintenance Petition and stated that in the year 2015, due to the misunderstanding between the respondent's mother and the petitioner's sisters, he arranged the separate residence and without any cause, first respondent left the said house. The respondent also denied this monthly income as pleaded by the petitioner and he only received Rs.30,787/-. In the said circumstances, the claim of the respondent to be rejected.

4. The learned Trial Judge considering the evidence adduced on the side of the petitioner as well as the respondents viz., PW.1, PW.2, DW.1 to DW.3 and documents Exs.P1 to P13 and Exs.R1 to R7 and Court documents Exs.C1 to C3 granted maintenance of Rs.12,000/- for all the respondents. The learned Trial Judge also categorically held that



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the petitioner has not established any income source of the first respondent.

5. Aggrieved over the same, the petitioner preferred this revision. The learned counsel for the petitioner would submit that the petitioner herself left the house of the petitioner and there was no bonafide on the part of the respondent claimed the maintenance. Further, the respondent herself is not willing to live with the petitioner. The counsel further submitted that the petitioner already has taken number of Insurance Policies in the name of the children and also in the name of the first respondent. The learned counsel further submitted that the petitioner's service is only regularised in April 2020 and he only received Rs.30,787/-. So the amount granted by the learned trial Judge is on higher side and in all aspects, the order passed by the Court below is liable to be set aside.

6. On the other hand, the learned counsel for the respondent submitted that since the petitioner is living another lady, she left the matrimonial home. The petitioner received more than Rs.40,000/- per month. He bound to pay the maintenance amount.



7. This Court considered the rival submission made by the both parties.

8.1. Once marriage is consummated, the wife becomes the husband's family member, and the husband is duty bound to maintain his wife and child.

8.2. Section 125 Cr.P.C creates a legal obligation upon the husband to maintain his wife and the child.

8.3. Till there is no legal separation, the wife continues to be the wife. Needless to say, a child is the child of the petitioner till his days. Therefore, he is duty-bound to maintain them.

9. The Hon'ble Supreme Court in the Judgment held that the revision Court while exercising the power under Section 397 Cr.P.C., r/w. 401 Cr.P.C., has no jurisdiction to interfere the order of the maintenance granted by the Court below without any perversity.

9.1. The same was fortified by the following ratio of the Hon'ble Supreme Court judgment in ***Rajathi v. C. Ganesan***, [(1999) 6 SCC 326]

***Rajathi v. C. Ganesan*, (1999) 6 SCC 326:**

“9. We are not going into the question if the High Court on examining the case on merit was correct in coming



to the conclusion that the wife was possessed of sufficient means and was able to maintain herself. In the present appeal, we are only concerned to see if the High Court was justified in invoking its inherent powers under Section 482 of the Code and we do not think the High Court was right.

11. In the present case, the High Court minutely examined the evidence and came to the conclusion that the wife was living separately without any reasonable cause and that she was able to maintain herself. All this the High Court did in exercise of its powers under Section 482 of the Code which powers are not a substitute for a second revision under sub-section (3) of Section 397 of the Code. The very fact that the inherent powers conferred on the High Court are vast would mean that these are circumscribed and could be invoked only on certain set principles.

12. It was not necessary for the High Court to examine the whole evidence threadbare to exercise jurisdiction under Section 482 of the Code. Rather in a case under Section 125 of the Code the trial court is to take a prima facie view of the matter and it is not necessary for the Court to go into the matrimonial disputes between the parties in detail. The section provides maintenance at the rate of Rs 500 per month. There is an outcry that this amount is too small. In the present case, however, we are quite surprised that the Court granted a paltry amount of Rs 200 per month as maintenance which was confirmed in the revision by the Sessions Court and the High Court thought it fit to interfere under Section 482 of the Code in exercise of its inherent jurisdiction.”

10. It is an admitted case that the petitioner married the first respondent and the four children were born out of the wedlock. Since there is no dispute regarding the relationship, the maintenance claim of



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the respondents from the petitioner is sustained. It is the specific allegation of the first respondent that the petitioner is living with another lady and hence, she left the matrimonial home. The said fact is elicited from the evidence of the respondent No.3. So the first respondent left the matrimonial home with reasonable cause.

11. From the evidence of DW.3, it is clear that the first respondent has no independent income. The respondents 2 to 5 are children of the petitioner. The petitioner has not legally separated the relationship with the 1st respondent. The petitioner is working as a Post Master and earned more than Rs.30,787/-. The learned Trial Judge, considering the over all circumstances rightly granted maintenance of Rs.12,000/- per month. Considering the present scenario of the cost of living, the amount awarded towards maintenance is minimum. So, this Court does not find any perversity in the order of the learned Trial Judge and there is no ground to interfere in the maintenance order passed by the Court below.

11.1. In the said circumstances, the first respondent's husband did not make out a case to interfere with finding rendered by the Court below regarding the entitled maintenance by the respondent and quantum of



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amount.

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12. Accordingly, this Criminal Revision Case is dismissed.

Consequently, the connected Miscellaneous Petition is closed.

05.07.2023

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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K.K. RAMAKRISHNAN. J.,

trp

To

The Family Court, Thanjavur.

Order made in
CrI.R.C(MD).No.686 of 2023
and
CrI.M.P(MD).No.9590 of 2023

Dated : 05.07.2023