



CrI.R.C.(MD).No.427 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

CrI.R.C(MD).No.427 of 2023

and

CrI.M.P(MD).No.6283 of 2023

A.Sivasubramanian

... Petitioner

Vs.

1.Rajeswari

2.Minor S.Anish

1st respondent is mother and
Guardian of the 2nd respondent)

... Respondents

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401

Cr.P.C., to call for the records relating to the impugned order of Judicial

Magistrate, Uthamapalayam in M.C.No.1/2020, dated 08.02.2023 and to

set aside the same.

For Petitioner : Mr.S. Alagarsamy

For respondents : Mr.P. Suruliraja



Crl.R.C.(MD).No.427 of 2023

ORDER

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This Criminal Revision case has been filed to call for the records relating to the impugned order of Judicial Magistrate, Uthamapalayam in M.C.No.1 of 2020, dated 08.02.2023 and to set aside the same.

2. The marriage between the petitioner and first respondent was solemnized on 30.11.2008. In the wedlock, the second respondent was born. Thereafter, some dispute arose between the petitioner and the first respondent and hence, the first respondent left the matrimonial home and living separately with her parents. Thereafter, she filed maintenance petition stating that the petitioner is MCA graduate and working in Hyderabad and he is earning a sum of Rs.80,000/- per month and claimed a sum of Rs.20,000/- as monthly maintenance.

3. The revision petitioner after receipt of the summon in M.C. petition filed vakalat and also filed counter affidavit and thereafter, P.W.1 respondent herein was examined and marked the documents Exs.P1 to P4. No body is examined on the side of the petitioner and hence, the learned trial Judge after considering the evidence on record granted



maintenance as Rs.20,000/- per month to the respondents. Challenging the same, the petitioner has filed the present revision.

4. The learned counsel for the petitioner would submit that even though the petitioner cross examined the witnesses, the learned trial Judge has not given an opportunity to the petitioner to adduce the evidence on his side. Hence, he seeks for remand of the matter to the Trial Court.

5. On the other hand, the learned counsel appearing for the respondents submitted that the revision petitioner appeared through counsel and also filed counter affidavit. In the counter affidavit, the revision petitioner did not make any objection regarding his income source and in spite of adequate opportunities, he did not appear and depose before the Court below to prove his case and hence, there is no infirmity in the order passed by the learned trial Judge.

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



Crl.R.C.(MD).No.427 of 2023

7. It is admitted case that the summon was served in M.C.No.1 of 2020. The petitioner also filed counter affidavit and he also cross examined PW.1 wife and he did not adduce any evidence on his side. The M.C was filed in the year 2020 and the respondent till date not received any maintenance amount. From the following diary extract, it is clear that sufficient opportunities were provided to the petitioner.

<i>Hearing date</i>	<i>Order</i>
29.11.2022	Petitioner present, respondent present, P.W.1 Cross examined. Petitioner side evidence closed. Respondent side evidence at request, call on 06.12.2022.
06.12.2022	Petitioner present, respondent absent, PFA, respondent side not ready to examine. Hence, respondent side evidence closed. For orders, call on 28.12.2022.
28.12.2022	Both parties present, Judicial Magistrate Fast Track Court Uthamapalayam, holding (FAC) sitting at regular Court call on 03.02.2023 for orders.

So, there is no merit in the contention of the petitioner that sufficient opportunities were not provided to the petitioner and hence his prayer to remand is deserved to be rejected. The same would cause prejudice to the respondents, on the account that they did not receive maintenance till



date. If it is allowed, the same would fructurate the object of Section 125 of Cr.P.C.. It is well settled that the object of the maintenance law is to protect a deserted wife and dependent children from destitution and vagrancy. The object of under Section 125 Cr.P.C., is to provide the speedy remedy to the wife and children. The legislature in order to provide the maintenance in timely manner and imposed the obligation to dispose the maintenance proceedings at the earliest, by conducting summary proceedings. Otherwise, the purpose to advance the cause of social justice is deprived.

8. Looking from another angle, from the above facts, it is clear that sufficient opportunities provided to the petitioner. At this juncture, it is relevant to note that

(viliantibus Non Dormientibus Jura Subveniunt(Law assists those who are vigilant and not those who sleep over their rights)

This court finds intentional lapse on the part of the petitioner. Therefore the above maxim is applicable to the petitioner's case.



9. The learned trial Judge upon appreciation of entire evidence of P.W.1 including cross-examination, granted a sum of Rs.20,000/- as monthly maintenance. The repeated contention of the learned counsel for the petitioner that without any evidence the learned Judge has granted a sum of Rs.20,000/- as maintenance is not accepted. In spite of his appearance, the petitioner has not adduced contra evidence to disprove the case of the respondents. So this Court is duty bound to draw the adverse inference against the petitioner. So the learned Judge on the basis of the evidence of P.W.1, correctly granted maintenance of Rs. 20,000/- to both the respondents, which according to the view of the Court is in accordance with law. Considering the status of the party and present status of cost of living, the undisputed evidence of P.W.1 that the petitioner is working in the holder Stone Technology Hyderabad and earned Rs.80,000/- per month, this Court find no reason to interfere with the order passed by the learned trial Judge. When the petitioner has failed to raise any plea disputing his nature of job and his income source, remanding the matter to prove his case is against the theory of doctrine necessity and the same amounts to be useless formality. Further, it is a summary proceedings. If any change of circumstances happened, he



Crl.R.C.(MD).No.427 of 2023

always has further remedy as per code to modify the award.

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10. Accordingly, the Criminal Revision Case is dismissed.

Consequently, connected miscellaneous petition is closed.

11.07.2023

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

trp

To

The Judicial Magistrate, Uthamapalayam



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K.K. RAMAKRISHNAN. J.,

trp

Order made in
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