



Crl.R.C.(MD).Nos.512 of 2020 and 194 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2023

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THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).Nos.512 of 2020 and 194 of 2021

Crl.R.C.(MD).No.512 of 2020

Pau Shen Hu

... Petitioner

Vs.

Pin Chang Chen

... Respondent

PRAYER: This Criminal Revision Case is filed under Sections 397 & 401 of the Criminal Procedure Code, to call for the records in M.C.No.44 of 2018 on the file of the Family Court, Dindigul, dated 13.07.2020 and set aside the same and enhance the monthly maintenance as per claim.

For Petitioner : Mr.D.Venkatesh

For Respondent : Mr.S.Sarvagan Prabhu

Crl.R.C.(MD).No.194 of 2021

Pau Shen Hu

... Petitioner

Vs.

Pin Chang Chen

... Respondent

PRAYER: This Criminal Revision Case is filed under Sections 397 & 401 of the Criminal Procedure Code, to call for the records pertaining to the order of the Family Court Judge, Dindigul, passed in M.C.No.44 of 2018, dated 13.07.2020 and set aside the same.



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For Petitioner : Mr.S.Sarvagan Prabhu

For Respondent : Mr.D.Venkatesh

COMMON ORDER

Both the revision petitions are filed against the order passed in M.C.No.44 of 2018, dated 13.07.2020, on the file of the Family Court, Dindigul.

2.The facts in brief:

The marriage between the parties took place on 19.06.2017, as per Christian religious ceremony. After the marriage they have lived in Culcutta and at that time, both were working as Dentist. During the above said time, the respondent did not allow the petitioner take proper rest and also compelled her to work in Kitchen, attend Domestic works. For that purpose of purchasing the property, the respondent insisted the petitioner to bring money from her parents. Because of the refusal on the part of the petitioner, the respondent got agitated and was enimical towards the petitioner. Even effort made by the father also did not yield any result. At one point of time, she met with an accident near Vilupuram. Her right hand was amputated. So, she could not continue her practice as Dentist. About Rs.8,00,000/- was spent by her for treatment. Further treatment is also to be undertaken and the husband being the Dentist is earning Rs.10,000/- per



day. Seeking maintenance amount, she filed the petition.

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3.That was resisted by the husband stating that even though marriage is admitted, other allegations were denied false. Only the petitioner misbehaved with the parents and family members of the respondent. The proposal to buy a property is also denied. Only the wife went to her parental home without any proper intimation and valid reason. Even though approach was made by the husband, the wife did not relent. He also filed a matrimonial suit No.1707 of 2018 before the Barrackpore District Court. The wife appeared before the Court. He is getting only Rs.15,000/- as monthly income. He has to maintain his aged parents also. The petitioner as a Dentist is earning not less than Rs.15,000/- per month. Apart from that the parents also well placed in the life.

4.At the conclusion of the enquiry process, the trial Court awarded Rs.12,500/- as monthly maintenance to the wife from the date of order. Challenging the above said order, the husband filed revision in Crl.R.C.(MD).No.194 of 2021 and seeking enhancement the wife filed Crl.R.C.(MD).No.512 of 2020. Both were heard together and this common order is passed.



5.The learned counsel for the husband would submit that he is disputing the quantum, since the wife is practising as an Dentist and earning sufficient income for maintaining herself. The restitution petition filed by him was also allowed by the Court.

6.Per contra, the learned counsel for the respondent namely the wife would submit that because of the above said accident as stated in the petition, her right hand below the elbow region was amputated. So she is not in a position to continue her practise as Dentist. No income tax details has been produced by the revision petitioner to show his actual income. Apart from that he also contended that husband's family is a Dentist Family, since his father, a Dentist and his grandfather also.

7.Heard both sides.

8.Marriage is admitted and joint living for some time is also admitted. Now, the wife says that because of the accident and amputation her husband neglecting her and not taking care. Contrary allegation has been made by the husband to the effect that only the wife voluntarily deserted the matrimonial home and so she is not entitled for the maintenance.



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9.From the perusal of the order of the trial Court, it is seen that effort was made by the husband for reunion by way of sending notice to the wife. It is also seen that a case in Crime No.162 of 2018 was registered against the wife on the ground that she has taken away some of the articles. It was also charge sheeted. From the above, it is seen that the relationship between the parties gone beyond patch up. So what was the real issue between them could not be ascertained, since the allegation and counter allegation has been made against each other. But the fact remains that both were well placed in the life and earning sufficiently. But, every thing appears to have been turned away when the wife sustained injuries in the accident her right hand below her elbow was amputated.

10.In respect of the other issues, whether the wife voluntarily deserted the matrimonial home and live separately without any sufficient cause is a matter for consideration by the matrimonial Court, where the suit in Mat Suit No.1707 of 2018 filed and pending before the Additional District Court, Barrackpore and what happened to the above said suit is not clear on record. So the parties have to ventilate their grievance in the above said matrimonial suit. If any observation and findings is recorded by this Court, it may affect the pending matters. Hence, I am not going into these



matters, leave to decide the matter by the competent matrimonial Court.

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11.Since the quantum is only under dispute as stated above both were well placed in their life, but now, the position is changed and because of the accidental injury, the wife is not in position to carry on her profession as before. Since for a Dentist, hands are the tools. Without the hands, it is not possible to continue the profession. This fact was taken into account by the trial Court, which, I find not unreasonable.

12.With regard to the quantum of maintenance, the trial Court has stated that the husband would have been earning not less than Rs.50,000/- per month. He has to share 1/3rd of the amount towards the maintenance. On that ground the above said amount has been fixed. Even though the wife filed the revision seeking enhancement, absolutely, I find no reason to enhance the same. What was the actual income of the husband cannot be ascertained in the absence of any documentary evidence. The work done by the trial Court to order cannot be considered to be unreasonable. Ordering Rs.12,500/- per month to the wife cannot be considered as excessive or too low. So the amount that was fixed by the trial Court is found to be reasonable and no interference is called for.



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13.However, the order of maintenance from the date of order is not legal, in view of the judgment of the Honourable Supreme Court in the

case of ***Rajnesh Vs. Neha*** and another reported in ***(2021) 2 SCC 324***.

Therefore, that portion of the order is liable to be modified to the effect that the payment of maintenance amount shall take effect from the date of filing of the maintenance petition. In the above aspect, the revision petition filed by the wife in Crl.R.C.(MD).No.512 of 2020 is ***partly allowed***. In other aspects both the revision petitions are liable to dismissed. Accordingly, the revision petition filed by the husband in Crl.R.C.(MD).No.194 of 2021 is also **dismissed**.

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Index : Yes / No

Internet : Yes / No

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To

1. The Judge, Family Court, Dindigul.



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