



Crl.R.C.(MD).No.616 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Suresh Kannan

... Petitioner/Respondent

Vs.

1. Nithya

2. Minor Samiksha Sai

(Rep. by mother & guardian 1st respondent)

... Respondents/Petitioners

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for records and set aside the impugned order dated 12.02.2020 and made in M.C.No.03 of 2019 on the file of Family Court, Ramanathapuram, allow this criminal revision case.

For Petitioner : Mr.G.Karuppasamy Pandian
for Mr.S.Srinivasa Raghavan

For Respondents : Mr.T.Antony Arul Raj
for R1 & R2



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ORDER

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The petitioner is the husband who filed this revision challenging the maintenance granted by the Family Court, Ramanathapuram, dated 12.02.2020, in M.C.No.03 of 2019.

2.The facts of the case is that the first respondent is divorcee /wife and the second respondent is her child. The petitioner is a green card holder and he is living at USA and he entered into marriage with the first respondent on 24.10.2007. Out of the marriage, the second respondent was born on 02.09.2008. Thereafter, some dispute arose between the parties and hence, there was a matrimonial discord. In the said circumstances, both the parties started making rival allegations against each other. According to the first respondent, she also gave a complaint before the All Women Police Station, Tambaram. In view of the above strained relationship, the respondent filed maintenance petition claiming maintenance of Rs.2 lakhs per month for herself and Rs.1 lakhs for the second respondent/her child.

3.The petitioner filed a counter denying allegation and he made a charge against the first respondent that he sent a huge amount to the first respondent and



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the first respondent purchased the property in the name of her family members and hence, there are sufficient means to maintain herself. The petitioner also stated that he furnished particulars relating to the transfer of amount. She obtained ex-parte divorce petition and intentionally deserted the petitioner without any fault on the part of him. Hence, he seeks for dismissal of the maintenance petition.

4.To prove the maintenance, the first respondent/wife examined herself as P.W.1 and marked Ex.P1 to Ex.P.6. On the side of the petitioner, he examined himself as R.W.1 and marked Ex.R1 to Ex.R.12.

5.The learned trial judge considered oral and documentary evidence and granted maintenance of Rs.50,000/- to the first respondent/wife and Rs.30,000/- to the second respondent/child. Challenging the “*quantum alone*”, the petitioner filed this revision.

6.The learned counsel for the petitioner submitted that the petitioner is ready to make payment of Rs.30,000/- to the second respondent/child. He only made request to reduce the monthly maintenance amount of Rs.50,000/- granted



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to the first respondent/wife on the ground that before the COVID-19, his monthly income was above Rs.6,50,000/- and after the COVID-19, his monthly salary was substantially reduced. With the present salary, he is unable to meet his expenditure in USA. He also stated that earlier wife purchased the property from his income. She sold the same for the value of Rs.30,00,000/- and has the said amount in her hand. Therefore, the learned Trial Judge failed to consider the same as per the dictum laid down by the Hon'ble Supreme Court in the case of "**Ranjesh Vs Neha** reported in **2021 2 SCC 324**". Hence, he seeks for reduction of the monthly maintenance amount awarded to the wife.

7.The learned counsel appearing for the respondents submitted that this is not a case at all to reduce the amount from Rs.80,000/-. Considering the status of the parties and also the income of the parties and also the economic status of the parties, the learned trial Judge after considering the admitted monthly income of the petitioner Rs.6,50,000/- granted only Rs.80,000/- to the respondents. The amount of Rs.80,000/- is not proportionate one. But, the first respondent/wife did not intend to file any petition for enhancement and she is satisfied with the said amount. Hence, no interference is required with the quantum issued by the learned trial judge.



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8. The Hon'ble Supreme Court laid the following guidelines in the case of ***Rajnesh v. Neha***, reported in ***(2021) 2 SCC 324*** to determine the monthly maintenance:-

- “1. Status of the parties.*
- 2. Reasonable wants of the claimant.*
- 3. The independent income and property of the claimant.*
- 4. The number of persons, the non-applicant has to maintain.*
- 5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.*
- 6. Non-applicant's liabilities, if any.*
- 7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.*
- 8. Payment capacity of the non-applicant.*
- 9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.*
- 10. The non-applicant to defray the cost of litigation.*
- 11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act.”*



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9.As per the above guidelines issued by the Supreme Court, the learned counsel appearing for the petitioner/husband submitted that the assets of the wife was bought from the income source of the husband has also to be considered. After considering the above aspect, the balance due to be taken. The first respondent/wife had not produced any document to prove the income of the petitioner/husband. In the said circumstances, the income of the petitioner fixed by the learned trial judge is not in accordance with law. The first respondent/wife is duty bound to prove the income of the husband. Without any documentary evidence, the learned trial judge granted maintenance of Rs. 50,000/- to the first respondent which is not reasonable one.

10.The learned counsel appearing for the first respondent/wife submitted that the petitioner admitted earlier he received the monthly salary as Rs.6,50,000/-. But he pleaded that now the same has been reduced. In that event, he is duty bound to prove the same. The sale price was deposited for the welfare of the female child. She has no income source. Therefore, considering the social status and the income of the husband and the cost of living, the learned trial Judge correctly granted maintenance of Rs.50,000/- to the first respondent and Rs.30,000/- to the second respondent. He also relied the same judgment of the



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Hon'ble Supreme Court and argued that even if wife has any source of income and the same is not a ground to disown the liability to pay the maintenance in consonance with the status of the parties. Hence, he seeks to confirm the award.

11.This Court considered the above submission and also judgment of the Honourable Supreme Court and perused the records and the impugned order.

12.In this case, the petitioner is working in USA. He produced the account statements under Ex.R3 to R6. He also produced the Ex.R7, R10, R.11 to show that he had been periodically sending the amount to the first respondent and using the same, the first respondent purchased the property under Ex.R.9. From the above records, it is clear that his monthly salary is more than Rs.6,00,000/-. Further, in the stay petition, he admitted that his monthly salary is more than Rs.3,38,650/- after various deduction including the loan dues and the same was also stated in the grounds. The same has not been properly explained by the petitioner. In the said circumstances, admission is best piece of evidence to prove the monthly income and hence, the admitted fact need not be proved. The learned trial judge considering the above aspect, granted monthly maintenance of Rs.50,000/- to the first respondent.



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13. The first respondent stated that he deposited the sale consideration for the welfare of the female child. Apart from that, both the families are reputed families. The first respondent along with her child requires sufficient amount to lead their life in similar status as they had lived in the house of the husband/father as held by the Hon'ble three member Bench of the Supreme Court in the case of **Reema Salkan v. Sumer Singh Salkan**, reported in 2019 (12) SCC 303. Reiterating the principle the law laid down by the Hon'ble Supreme Court in the case of **Shamima Farooqui v. Shahid Khan**, reported in 2015 5 SCC 705 is as follows:-

14. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be



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allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one.

14.In the case of ***Bhuwan Mohan Singh v. Meena***, reported in (2015) 6

SCC 353:-

2.Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that



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is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.

15.The learned trial judge considering the evidence of the husband and wife and status of the parties and also considering the following guidelines issued by the Hon'ble Supreme Court in the case of “**Rajnish vs. Neha**, reported in (2021) 2 SCC 324 ”more particularly,



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- 1. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home;*
- 2. Non-applicant's liabilities, if any;*
- 3. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed;*

“fixed the maintenance of Rs.50,000/- to the first respondent/wife and Rs.30,000/- to the second respondent/child”. This Court finds no perversity in the said conclusion. Therefore, there is no ground to interfere and the same is also not permissible as per the law laid down by the Hon'ble Supreme Court in the following Judgment:-

15.1. In the case of **Hamima Farooqui Vs. Shahid Khan**, reported in (2015) 5 SCC 705:

20. In the instant case, as is seen, the High Court has reduced the amount of maintenance from Rs 4000 to Rs 2000. As is manifest, the High Court has become oblivious of the fact that she has to stay on her own. Needless to say, the order of the learned Family Judge



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is not manifestly perverse. There is nothing perceptible which would show that order is a sanctuary of errors. In fact, when the order is based on proper appreciation of evidence on record, no Revisional Court should have interfered with the reason on the base that it would have arrived at a different or another conclusion. When substantial justice has been done, there was no reason to interfere. There may be a shelter over her head in the parental house, but other real expenses cannot be ignored. Solely because the husband had retired, there was no justification to reduce the maintenance by 50%. It is not a huge fortune that was showered on the wife that it deserved reduction. It only reflects the non-application of mind and, therefore, we are unable to sustain the said order.

16.Accordingly, this Criminal Revision Case is dismissed by confirming the maintenance order passed by the Family Court, Ramanathapuram, dated 12.02.2020, in M.C.No.03 of 2019.

18.12.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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1. The Judge,
Family Court,
Ramanathapuram.
2. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

vsg

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