



CrI.R.C.(MD).No.670 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	:	31.07.2023
Pronounced on	:	02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.RC.(MD).No.670 of 2022

and

CrI.M.P.(MD).No.8706 of 2022

Palanichamy

... Petitioner

Vs.

1.Chandraprabha

2.Sipigashree

3.Minor.Anushkasree

... Respondents

(The third respondent represented through/ her mother first respondent)

PRAYER: This Criminal Revision Case has been filed under Section 397 r/w 104 of Cr.P.C., to call for the records and set aside the order passed by the Family Court, Madurai in M.C.No.123 of 2017, dated 13.04.2022.

For Petitioner :Mr.A.Banumathy

For Respondents :Mr.A.Chandrakumar for R1 to R3

Page 1 of 11



CrI.R.C.(MD).No.670 of 2022

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ORDER

The petitioner has filed this petition against the impugned maintenance award dated 13.04.2022 passed in M.C.No.123 of 2017, on the file of the learned Judge, Family Court, Madurai, wherein, the Court below directed to pay monthly maintenance of Rs.20,000/- to the respondents, ie, his wife and children.

2.The Case of the first respondent/wife in M.C.No.123 of 2017:

The first respondent alleged that the marriage between her and the revision petitioner was solemnized on 04.12.2003 and due to their wedlock, the respondents 2 and 3 were born to them. Due to some dispute, they got separated. After several attempts for reunion by the petitioner, the first respondent refused the same. Thereafter, the petitioner filed a petition for restitution of conjugal rights in H.M.O.P.No.322 of 2014, before the III Additional Sub Judge, Madurai and obtained exparte order on 07.04.2015. Thereafter, the petitioner filed a petition for divorce in H.M.O.P.No.424 of 2015 and an exparte decree was granted on 20.01.2017. Since the respondents are unable to maintain themselves, they filed the M.C.No.123



CrI.R.C.(MD).No.670 of 2022

of 2017.

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3.The case of the petitioner/husband in M.C.No.123 of 2017:

The husband stated that the first respondent voluntarily deserted the revision petitioner without any valid reason. She is not inclined to live with the petitioner even after the restitution of conjugal rights order passed against her in H.M.O.P.No.322 of 2014 filed by him. Therefore, he filed a petition in H.M.O.P.No.424 of 2015 to seek divorce and the same was ordered. Hence, the petitioner is not liable to pay maintenance to the first respondent. He also stated that the first respondent is earning sufficient income by conducting spoken English classes and hence he claims to dismiss the maintenance case.

4. To prove the claim of maintenance, the first respondent examined herself as P.W.1 and he produced Ex.P1 to Ex.P10. The petitioner examined himself as R.W.1 and marked Ex.R1 to Ex.R8.



CrI.R.C.(MD).No.670 of 2022

WEB COPY

5. The learned trial Judge after considering the same, granted a sum of Rs.8,000/- per month towards the maintenance to the first respondent and a sum of Rs.6,000/- per month each to the second and third respondents towards maintenance (totally Rs.20,000/- per month), by impugned order dated 13.04.2022. Aggrieved by the said order, the revision petitioner has come forward with the present criminal revision case.

6. The learned counsel for the petitioner would submit that the first respondent is not entitled to get maintenance on the ground that the first respondent voluntarily deserted the revision petitioner without any valid reason. Further, the first respondent was willfully avoiding the Court proceedings in H.M.O.P.No.322 of 2014 and H.M.O.P.No.424 of 2015. Thereafter only, the first respondent was set exparte. The petitioner herein is ready to pay the maintenance amount to the second and third respondents. He would further submit that the first respondent has sufficient income by conducting spoken English class and hence, the claim petition filed by the respondents has to be rejected. The learned trial Judge, erroneously awarded the monthly maintenance. Therefore, he seeks to set aside the order passed



CrI.R.C.(MD).No.670 of 2022

by the trial Court.

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7. The learned counsel for the respondents submitted that as on date, the petitioner herein is earning more than a sum of Rs.50,000/- per month and is also having the own house worth about Rs.30,00,000/-. The petitioner is duty bound to pay the maintenance amount to the respondents. Hence, the award passed by the Court below is very meager. Hence, he prayed to dismiss this case.

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

9.The Entitlement of Divorcee to get maintenance:

The petitioner is not raising any dispute about the status of the second and third respondent and he undertakes to pay the maintenance to them. He disputed the payment of monthly maintenance to the first respondent, on the ground that an exparte divorce was granted on the ground of desertion and to set aside the same, I.A.No.201 of 2018 also filed



CrI.R.C.(MD).No.670 of 2022

before the Court below. The first respondent has not remarried. As per Section 125 of Cr.P.C., wife includes divorcee and she is entitled to claim maintenance till her remarriage. The Hon'ble Supreme Court discuss the same in detail in the case of **Swapan Kumar Banerjee v. State of W.B.**, reported in (2020) 19 SCC 342 and has held that even divorce was granted on the ground of desertion, there is no bar to claim the monthly maintenance. The relevant paragraph of the judgment is as follows:

7. No doubt, as urged by Mr Debal Banerjee, Explanation II to Section 125 CrPC by deeming fiction includes a divorced woman to be a wife and, therefore, a woman who has been divorced by her husband can still claim maintenance under Section 125 CrPC. The question is how we should read the provisions of sub-section (4) in this regard, especially when we deal with those women, against whom a decree for divorce has been obtained on the ground that they have deserted their husband. Once the relationship of marriage comes to an end, the woman obviously is not under any obligation to live with her former husband. The deeming fiction of the divorced wife being treated as a wife can only be read for the limited purpose for grant of maintenance and the deeming fiction cannot be stretched to the illogical extent that the divorced wife is under a compulsion to live with the ex-husband. The



Crl.R.C.(MD).No.670 of 2022

husband cannot urge that he can divorce his wife on the ground that she has deserted him and then deny maintenance which should otherwise be payable to her on the ground that even after divorce she is not willing to live with him. Therefore, we find no merit in the contention of Mr Debal Banerjee.

10. The proof of the petitioner's income

The first respondent, pleaded that the petitioner is having a shop namely Sri.Murugan Stores, and earning more than Rs.50,000/- per month to prove the same she marked Ex.P.6, the income tax return. From Ex.P6, it reveals that his monthly income is more than a sum of Rs.35,000/-. The petitioner has also not filed the assets and liability affidavit as required as per the direction of Hon'ble Supreme Court in the case of **Rajnesh Vs. Neha**. From the undisputed fact that the petitioner has a own house and running a business and in the absence of the affidavit containing the assets and liability, and through Ex.P.6, it is easily presumed that the petitioner is getting more than Rs.50,000/- per month. Hence, this Court finds no reason to interfere with the fixation of the monthly income of the petitioner.



Crl.R.C.(MD).No.670 of 2022

11. Proof of the first respondent's income:

The first respondent specifically denied the fact that she is conducting Spoken English class. In such situation, the petitioner is duty bound to prove the income source of the first respondent. But, he has not produced any evidence to prove the income of the first respondent. No evidence was produced to prove the income of the first respondent that she is conducting the Spoken English Class. It is well settled principle that mere pleading without evidence is not proof of fact. The pleadings must be supported with the acceptable evidence. In this aspect, it is relevant to note that the judgment of the Hon'ble Supreme Court Judgment reported in the case of ***Swapan Kumar Banerjee v. State of W.B., (2020) 19 SCC 342*** :

10. The next issue raised was that the wife being a qualified architect from a reputed university i.e. Jadavpur University, Calcutta would be presumed to have sufficient income. It is pertinent to mention that as far as the husband is concerned, his income through taxable returns has been brought on record which shows that he was earning a substantial amount of Rs. 13,16,585 per year and on that basis Rs.10,000 per month has been awarded as monthly maintenance to



Crl.R.C.(MD).No.670 of 2022

the wife. No evidence has been led to show what is the income of the wife or where the wife is working. It was for the husband to lead such evidence. In the absence of any such evidence no presumption can be raised that the wife is earning sufficient amount to support herself.”

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.*



CrI.R.C.(MD).No.670 of 2022

11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act.”

12. The second and third respondents are studying in 9th and 3rd standards respectively. Considering the educational expenses and needs of the respondents and present day cost of living and the social economic status of the parties and the absence of the proof of the income source of the first respondent, the learned trial Judge correctly decided the entitlement of the respondents to claim maintenance from the petitioner and reasonably fixed the monthly maintenance of Rs.20,000/-. This Court does not find any ground to differ with the findings of the learned trial Judge.

13. For all the reasons, this Criminal Revision Case fails and the same stands dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

02.11.2023

NCC :Yes/No
Index :Yes/No
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Crl.R.C.(MD).No.670 of 2022

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Crl.RC.(MD).No.670 of 2022

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Crl.M.P.(MD).No.8706 of 2022

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