



Crl.R.C.(MD).No.897 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	:	25.09.2023
Pronounced on	:	02.11.2023

CORAM
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). No.897 of 2023
and
Crl.M.P(MD). No.11831 of 2023

Mohanraj ... Petitioner/Respondent

Vs.

Chandramani ... Respondent/Petitioner

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and allow the Criminal revision petition by setting aside the fair and decreetal order M.C.No.13/2018 on the file of the Family Court, Karur dated 27.11.2019.

For Petitioner : Mr.I.Velpradeep

For Respondent : Mr.R.Mathiyalagan

ORDER

The petitioner has filed this petition against the impugned maintenance award dated 27.11.2019 passed in M.C.No.13 of 2018, on the file of the learned



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Judge, Family Court, Karur, wherein, the Court below directed to pay monthly maintenance of Rs.25,000/- to the respondents/wife.

2. The petitioner entered into marriage with the respondent on 18.11.2015. The respondent is a divorcee. After, she got divorce with her earlier husband, she got married to the petitioner herein. At the time of marriage, the respondent's parents gave sufficient dowry. Within ten days from the marriage, the petitioner started to consume alcohol and assault the respondent. In spite of sincere advice, the petitioner did not change his attitude. On 15.06.2016, he asked the respondent to get a sum of Rs.50,00,000/- from the respondent's parents to meet out the loss incurred in running the Mini Bus. But the respondent refused, and hence, the petitioner herein assaulted her and driven her out from the matrimonial home. Thereafter, she filed D.V.O.P.No.38 of 2016, to claim a number of reliefs, including maintenance. In the said proceedings an exparte order was passed directing the petitioner to pay Rs.1,00,000/- as a monthly maintenance to the respondent. He did not make any payment and hence, the respondent filed the present maintenance petition, claiming a sum of Rs.30,000/- as monthly maintenance.



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3. The petitioner herein filed a counter denying the allegations made in the petition. The respondent is a M.Com graduate and the petitioner has completed +2. With superiority complex, she started to treat him like a slave. Further he denied the averment that he owns eight mini buses and he derived a sum of Rs.2,00,000/- as a monthly income from the said buses. He also denied the fact that the petitioner has own house worth of rupees more then one crore. The D.V.O.P. petition is already filed and hence, the present maintenance petition is not maintainable.

4. To prove the claim of the respondent, the respondent herself examined as P.W.1 and also examined P.W.2 and P.W.3 and marked Ex.P1 to Ex.P7. The petitioner examined himself as R.W.1 and he also examined R.W.2 and R.W.3 and exhibited Ex.R1 to Ex.R6.

5. The learned trial Judge, considering the above documents and oral evidence granted maintenance of Rs.25,000/- to the respondent. Challenging the same, the petitioner herein filed this present criminal revision case before this Court.



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6. The learned counsel for the petitioner made the following submissions:

(i) The respondent earlier entered into marriage with one Balasubramanian. After receiving more than a sum of Rs.13,50,000/-, the respondent obtained divorce from him. Similarly she filed this petition to extract money from the petitioner. The said conduct was not considered by the learned trial Judge. Hence, he seeks to appreciate the above facts.

(ii) The learned trial Judge failed to consider that he is not a owner of eight buses, after seven months from the date of marriage, he sustained heavy loss in the mini bus business and as on date only two buses are available and the same did not fetch more income. In the said circumstances, granting of maintenance as Rs.25,000/- per month is not legally valid.

(iii) The learned trial Judge, failed to dismiss the petition considering that sufficient maintenance award of Rs.1,00,000/- is granted in favour of the respondent in the D.V.O.P., proceedings. Hence, the present petition is not maintainable.

7. The learned counsel for the respondent submitted that in D.V.O.P., proceedings, an exparte order was passed and the same may be set aside. Even as per the D.V.O.P., proceedings, no maintenance award was paid and hence, there



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is no bar to give maintenance in this proceedings. Even as on date, the admitted case of the petitioner is that he is running two buses, after the sale of other mini buses. Hence, the learned trial Judge, correctly fixed the monthly income of the petitioner as Rs.50,000/-. The learned trial Court also taken into consideration of the fact that he has an own house and hence, there is no need to interfere with the order passed by the trial Court. The respondent got divorce from her first husband. At that time, he only handed over a sum of Rs.13,50,000/- as a marriage expenditure and not as a maintenance. Therefore, the allegation that the respondent in order to get more money filed this maintenance petition is not legally correct. Hence, in all aspect, the order passed by the learned trial Judge is in accordance with law.

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

9. The relationship between the petitioner and the respondent is admitted. The petitioner admitted the marriage with the respondent that took place on 18.11.2015. The respondent without any good intention married the petitioner in order to extract money from him and caused troubles from the date of marriage.



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This fact is not proved and also no circumstances established to presume the same. Even though maintenance award has been granted in the D.V.O.P, proceedings, there is no bar to initiate the proceedings under Section 125 of Cr.P.C.The Hon'ble Supreme Court has held in the case of ***Rajnish Vs. Neha*** reported in ***2021 2 SCC 324*** held that in the event of filing of maintenance petition, subsequent to the order passed in the D.V.C., proceedings, the Court has no jurisdiction to dismiss the petition as not maintainable. The Court below has taken into consideration the amount already granted in D.V.C. The relevant Paragraph of the judgement is as follows:

60. It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the DV Act and Section 125 CrPC, or under HMA. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/Family Court shall take into account the maintenance awarded in any previously



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instituted proceeding, and determine the maintenance payable to the claimant.

10. In this case, the learned trial Judge observed that the D.V.O.P., order is exparte order and it can be set aside at any time. Further, there is no evidence available on record that the petitioner made the payment of maintenance on the basis of D.V.O.P., order. In the said circumstances, the learned trial Judge, correctly granted maintenance of Rs.25,000/- per month. Hence, there is no need to interfere with the award.

11. The petitioner even though disputed the possession of eight mini buses, admitted in his evidence that two buses are there. Hence, the finding of the learned trial Judge, that the income would fetch Rs.50,000/- per month is not found fault with.

12. In view of the above law laid down by the Hon'ble Supreme Court, the contention of the petitioner that the present petition is filed after the order passed in D.V.C., is not maintainable cannot be accepted.

13. In this case, the learned trial Judge, only granted a sum of Rs.25,000/- as monthly maintenance and hence, there is no infirmity in the order. The learned



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trial Judge also taken into consideration that the said amount was not paid pursuant to the order passed by the trial Court in D.V.O.P.No.38 of 2016. In the said circumstances, the order passed by the learned trial Judge is in accordance with law.

14. 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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15. The learned trial Judge considered the above aspect and correctly fixed the monthly maintenance of Rs.25,000/- to the respondents, on the basis of the oral and documentary evidence. Since in all aspect the learned trial Judge correctly decided the entitlement of the respondent to claim maintenance from the petitioner, and reasonably fixed monthly maintenance of Rs.25,000/- to the respondents considering the earning capacity of the first respondent and needs of the respondents and social economic status of the parties and present day cost of living, this Court does not find any ground to differ with the findings of the learned trial Judge. It is made clear that if the petitioner is making the payment as per the order passed in D.V.O.P.No.38 of 2016, he is at liberty to deduct the maintenance award granted in M.C.No.13 of 2018.

16. With the above observation, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

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



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K.K.RAMAKRISHNAN, J.

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Pre-delivery Order made in
CrI.RC(MD). No.897 of 2023
and
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