



Crl.R.C.(MD).No.893 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	:	27.09.2023
Pronounced on	:	02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). No.893 of 2023
and
Crl.M.P(MD). No.11786 of 2023

Mohamed Sithick

... Revision Petitioner/Respondent

Vs.

1. S.Razitha Begam

2. Hamitha Begam

... Respondents/Petitioners

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the impugned order in M.C.No. 109/2016 passed by the Family Court, Trichirapalli dated 25.11.2022 and set aside the same.

For Petitioner : Mr.V.Pandiyan

For Respondents : Mr.T.Lenin Kumar



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ORDER

The petitioner has filed this petition against the impugned maintenance award dated 25.11.2022 passed in M.C.No.109 of 2016, on the file of the Family Court, Trichirappalli, wherein, the Court below directed to pay monthly maintenance of Rs.20,000/- to the respondents namely the petitioner's wife and daughter.

Averments in M.C.No.109 of 2016 by the respondents:

2. The petitioner entered into marriage with the respondent on 12.04.1999. Out of their wedlock, the second respondent and another son Mohamed Shidik were born. The petitioner is a member of the SDPI political party. He has been running a mutton and chicken shop in Aavadi, Chennai. He constructed a house at Chennai, for which, he required amount. Therefore, he insisted the first respondent to bring amount from her father. Her father also gave the amount upto Rs.3,00,000/- and he demanded further and caused cruelty to the first respondent herein. It is also stated that the petitioner assaulted the first respondent and driven her out from the matrimonial home and entered into second marriage. He also took the custody of the male child. The first respondent and the female child left from the matrimonial home and living separately at



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Trichy. The second respondent is studying at Trichy. The first respondent filed this maintenance petition to claim maintenance of Rs.20,000/-. Before filing maintenance petition before the Court below, she already initiated D.V.C.No.122 of 2016 on the file of the learned Additional Magistrate, Additional Mahila Court, Trichirappalli, for claiming a number of reliefs including maintenance. In the DVC proceedings, the learned trial Judge granted maintenance of Rs.10,000/- to the each respondent, apart from granting of other reliefs. Challenging the same, the Crl.A.No.57 of 2020, was filed along with the stay petition. In the stay petition, stay was granted with a condition to deposit 1/3 of the arrears amount. In the meantime, the first respondent filed this maintenance petition to claim maintenance of Rs.20,000/- under Section 125 of Cr.P.C.

3.The petitioner filed a counter denying the allegation and stating that the first respondent on her own violation, she left matrimonial home. He initially was doing mutton business and due to the loss, he is now doing only chicken business and hence, the case of the first respondent that the petitioner is earning more then a sum of Rs.80,000/- is not correct. The respondent already filed D.V.C., and maintenance was awarded. In the said circumstance, the present petition is not maintainable. Further, he is duty bound to maintain his second



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wife and children. He is also duty bound to take care of his male child born through the first respondent. He also stated that the first respondent is running a fancy store and earning sufficient income to maintain themselves. Hence, he seeks for dismissal of the maintenance case.

4.To prove her claim, the first respondent examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.3. On the side of the petitioner, he examined himself as R.W.1 and marked the documents Ex.R1 to Ex.R6.

5.The learned trial Judge, after considering all the evidence and perusal of the records, granted total maintenance of Rs.20,000/- to the respondents. The learned trial Judge, has not accepted the plea of the maintainability of the present maintenance case on the ground that D.V.C., filed under the Domestic Violence Act, where the Court already granted the monthly maintenance. The learned trial Judge, fixed the income of the petitioner herein as Rs.75,000/- per month. The learned trial Judge, considered Ex.P.3 wherein the petitioner clearly stated that his property details and the value is more than a sum of Rs.21,60,000/-. The learned trial Judge, has not accepted the case of the petitioner that the first respondent is running a fancy store and earn income to meet their livelihood, for



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want of proof.

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6. Aggrieved over the same, the petitioner filed this criminal revision case and raise the following submissions:

(i) The learned trial judge has not properly addressed the issue of maintainability of the maintenance petition under Section 125 Cr.P.C., when the first respondent got the maintenance order in D.V.C.No.122 of 2016 filed under the Domestic Violence Act. Hence, he seeks dismissal of the present maintenance petition filed under Section 125 Cr.P.C.

(ii) The learned trial Judge without properly considering the evidence on record, fixed the monthly income of the petitioner as Rs.75,000/-.

(iii) The learned trial Judge, failed to consider that the first respondent is continuing her father's business namely fancy store and earning sufficiently to maintain themselves.

7. The learned counsel for the respondents submitted that as per the judgment of the Hon'ble Supreme Court reported in III(2020) DMC 390 (SC), in the case of Rajnesh Vs. Neha, the petition under Section 125 Cr.P.C., is maintainable and the same was properly considered by the learned trial Judge.



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The learned trial Judge correctly fixed the monthly income of the petitioner as Rs.75,000/- on the basis of the document Ex.P.3 and other circumstances. The learned trial Judge correctly held that the petitioner has not established the factum of running of fancy store by the first respondent. In all aspect, the learned trial Judge correctly appreciated the entire evidence and granted maintenance. Therefore, he seeks for dismissal of this case.

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

9. The Hon'ble Supreme Court 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 dismissed the petition as not maintainable. The Court below has taken into consideration in awarding maintenance, 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



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

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

10. In this case, the learned Judicial Magistrate, only granted a sum of Rs.20,000/- as monthly maintenance and hence, there is no infirmity in the order. In the said circumstances, the order passed by the learned trial Judge is in accordance with law.

11.The learned trial Judge considered Ex.P.3 in granting the awarded amount. The petitioner contested in Aavadi local body election. For which, he



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submitted the assets to the tune of Rs.21,60,000/-. Apart from that, he admitted that he is running a chicken shop. Taking into consideration of all the above facts, the learned trial Judge correctly fixed the monthly income of Rs.75,000/-. The petitioner raised the plea that the first respondent is running a fancy store. But no evidence was produced to believe the pleadings of the revision petitioner. The learned 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.C.No.122 of 2016. The Hon'ble Supreme Court laid the following guidelines in the case of **Rajnish 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.*



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

12. The learned trial Judge considered the above aspect and correctly fixed the monthly maintenance of Rs.20,000/- to the respondents, on the basis of the oral and documentary evidence. Since in all aspects the learned trial Judge correctly decided the entitlement of the respondent to claim maintenance from the petitioner, and reasonably fixed monthly maintenance of Rs.20,000/- 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. The petitioner is entitled to deduct the amount if already paid or likely to be paid in D.V.C. proceedings towards maintenance.

13. Accordingly, this Criminal Revision Case is dismissed with the above observation. Consequently connected miscellaneous petition is closed.

02.11.2023

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



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The matter is listed today under the caption “for being mentioned” at the instance of the learned counsel appearing for the petitioner.

2.The learned counsel for the petitioner submitted that there is typographical error occurred while typing the quantum of award granted by the trial Court is Rs.20,000/- instead of Rs.30,000/- in Paragraph Nos.1, 5, 10 and 12 and hence, the same may be corrected.

3. In view of the above, the Registry is directed to issue fresh order copy, after correcting the quantum of award granted by the trial Court as Rs.30,000/- in Paragraph Nos.1, 5, 10 and 12 in the order dated 02.11.2023.

06.12.2023

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Note: Issue order copy on 06.12.2023.



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