



CrI.R.C.(MD).No.585 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 14.12.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.RC(MD)No.585 of 2019

G.Thomas Albert

.. Petitioner

Vs.

1.P.Ivanjelin Jeni

2.Minor Jensa Sweeti

.. Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records from the learned Judge, Family Court, Tirunelveli in M.C.No.54 of 2018 and allow the revision petition and set aside the order dated 25.06.2019 awarding monthly maintenance of Rs.7,000/- each to the respondents from the date of application namely, from 05.10.2018 onwards.

For Petitioner : Mr.N.Marimuthu

For Respondents : Mr.S.M.P.Amalan



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ORDER

The petitioner has filed this petition against the impugned maintenance award dated 25.06.2019 passed in M.C.No.54 of 2018, on the file of the learned Judge, Family Court, Tirunelveli, wherein, the Court below directed the revision petitioner to pay monthly maintenance of Rs.7,000/- each to the respondents.

2.The revision petitioner is the husband of the 1st respondent. He has challenged the maintenance order granted in favour of the respondents, namely, his wife and the minor child. The case of the respondent before the trial court is that on 30.12.2015, she married the petitioner as per the Christian rituals. At the time of marriage, a considerable dowry also was given. Due to their marriage, a child was born. Prior to the birth of the child, the petitioner forced the first respondent to abort the child, but she refused. After the birth of the child, there was some matrimonial discord and hence the respondent left the matrimonial home. Thereafter, the respondent made a complaint before the jurisdictional police station and asked to return the articles and also



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to pay permanent alimony. In order to escape from the said proceedings, the petitioner filed a petition in D.V.O.P.No.78 of 2017, on the file of the Principal District Judge, Thoothukudi for restitution of conjugal rights. The 1st respondent had spent more than 3 lakhs from the date of the birth of the child and hence, she sought maintenance of Rs.15,000/- per month for herself and child.

3. The petitioner filed a counter before the Court below denying the allegation except the relationship of the parties and made counter allegations against the 1st respondent. The petitioner specifically pleaded that the first respondent herself left the matrimonial home without any reasonable cause. The 1st respondent is also working and earning sufficient income. The petitioner's monthly income is only Rs. 21,200/-. After all deductions, he received only Rs.18,200/-. He also stated that the first respondent is an MBA graduate and earns more than Rs.30,000/- by conducting tuition. He also filed a petition for restitution of conjugal rights and he sought for dismissal of the maintenance petition.



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4. The first respondent to prove her claim, examined herself as PW1 and marked Ex.P1 to Ex.P6. The revision petitioner examined himself as R.W.1 and marked Ex.R1.

5. The learned trial Judge, after considering the evidence and documents, granted maintenance of Rs.7,000/- each to the respondents by impugned order dated 29.06.2015. Challenging the same, the petitioner has filed this revision.

6. The learned counsel for the petitioner submitted that the learned trial Judge failed to consider that he was earning only Rs.16,200/- and granted disproportionate amount of Rs.14,000/- to the respondents. This is against the dictum of judgment of the Hon'ble Supreme Court reported in ***Kulbhushan Kumary.Raj Kumari*** reported in ***(1970) 3 SCC 129***, wherein the Supreme Court has stated that only 25% of the earning amount is to be granted as maintenance. The learned Counsel for the petitioner further submitted that the finding of the learned trial judge that the respondent has not left the matrimonial home without any reasonable cause, is not correct. The petitioner also has filed the petition for



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restitution of conjugal right and the same is still pending and the learned trial judge also knew that the petitioner was willing to live with her. Further, from the beginning of the proceedings, he was ready to live with the respondents.

7. The learned counsel for the respondents submitted that due to the harassment made by the petitioner she left the matrimonial home. She also made a complaint and also enquiry was conducted. During the course of the enquiry, he undertook to pay maintenance amount, but he did not make any payment. Hence, the respondents filed the maintenance claim. It is the case of the respondent that he is working and earns more than a sum of Rs.75,000/-. In the said circumstances, the case of the petitioner that he earns only Rs.21,200/- is not correct. Considering the case of the petitioner and the cost of day-to-day living, the learned trial judge has correctly granted a sum of Rs.14,000/- per month as monthly maintenance to the respondents. In view of the reason stated above, there is no need for interference with the order passed by the learned trial judge.



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8. This Court considered the rival submissions made by the learned Counsel appearing on either side and also perused the materials available on record and the impugned order.

9. The parties have admitted the relationship and the proceedings pending in D.V.O.P before the trial Court. It is the specific allegation of the first respondent that she was harassed by the petitioner and also there was frequent demand of dowry. In the said circumstances, she was unable to live with him. Hence, she left the matrimonial home. The said fact was appreciated by the learned trial judge and it was held that the respondent was unable to live in the matrimonial home.

10. It is the duty of the husband to prove his income and also disclose the true sources of his income. This Court finds no such disclosure. As per the pleadings of the first respondent, the petitioner is working as a professor and earns more than a sum of Rs. 75,000/-. But the petitioner submitted that he earns only Rs.21,200/- for which he has not produced any document. On his failure to do so, his earning of Rs.



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75,000/- has to be accepted. The petitioner has not come forward with clean hands about his income and in the said circumstances, his plea to take 25% of the monthly income cannot be accepted. In the subsequent decision, in the case of ***Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy***, reported in **(2017) 14 SCC 200** the Hon'ble Supreme Court considered the said precedent reported in **(1970) 3 SCC 129** relied upon by the petitioner has held as follows:

15... The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. ...

Therefore, this court concurred with the finding of the Learned trial judge in granting maintenance of Rs.14,000/- to both the respondents.

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

“1. Status of the parties.



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- 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.”*

12. The learned trial Judge considering the income and earning capacity of the petitioner/husband and the socio economic status of the parties and also considering the present day cost of living, granted maintenance of Rs.14,000/-, to the respondents which is in the considered opinion of this Court, is not exorbitant. Hence, this Court does not find any merit in this petition and this Criminal Revision Petition is liable to be dismissed.



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13. In the result, this Criminal Revision Case is dismissed. The impugned order passed by the learned Judge, Family Court, Tirunelveli, in M.C.No.54 of 2018 dated 25.06.2019, is hereby confirmed. Consequently, connected miscellaneous petition is closed.

14.12.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
sbn

To

- 1.The Judge,
Family Court,
Tirunelveli.
- 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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