



Crl.R.C.(MD).No.876 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.09.2023
Delivered on : 02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). No.876 of 2023
and
Crl.M.P(MD). No.11657 of 2023

G.Giridharan

... Petitioner/Petitioner

Vs.

S.Sujatha

... Respondent/Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the order dated 19.01.2023 made in M.C.No.9/2021 by the learned Family Court, Thanjavur and set aside the same and thereby allow the above criminal revision petition.

For Petitioner : Mr.C.Jeganathan

For Respondent : Mr.R.Maheswaran

ORDER

The petitioner has filed this petition against the impugned maintenance award dated 19.01.2023 passed in M.C.No.09 of 2021, granted by the learned



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Judge, Family Court, Thanjavur, wherein, the Court below directed to pay monthly maintenance of Rs.6,000/- to the respondent/wife.

2. The case of the respondent/wife in M.C.No.9 of 2021

The respondent is a deaf and dumb. The marriage between her and the revision petitioner was solemnized on 08.06.2015. At the time of marriage, the petitioner is working as a driver in Tamil Nadu State Transport Corporation and he and his family members harassed her by pointing out her infirmities. Thereafter, the respondent's family members made arrangement to live separately. Even after that, the petitioner harassed her under the influence of alcohol and caused physical torture to the deaf and dumb respondent. In the mean time, he met with an accident and his leg was amputated. For that, the respondent's family contributed more than Rs.3,30,000/-. Even though, without any satisfaction, he demanded further amount and 35 sovereigns of gold jewels of the respondent are also at the behest of his family members. Hence, she made a complaint before the Vallam Police Station. The petitioner and his family members caused cruelty by pointing out her physical infirmities i.e., she is deaf and dumb and she filed divorce petition before the Court. The petitioner is now working as helper and earns Rs.45,000/- per month. Since the respondent is deaf



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and dumb and unable to get any work, she filed maintenance petition claiming Rs.20,000/- as monthly maintenance.

3. The case of the petitioner/husband in M.C.No.9 of 2021

The petitioner filed counter by denying the allegation and specifically stated that the respondent's allegation that he and his family members caused cruelty to her by pointing out her infirmities is not correct. They never caused any cruelty and harassment. He has no habit of drinking. Since she herself left the matrimonial home, this maintenance petition is not maintainable. Her father is a retired Railway Employee and earns pension of Rs.65,000/-. He also doing business. After amputation of leg, the petitioner is suffering with further complication and the said complication incurring huge expenditure. He also lives with difficulties.

4. To prove the maintenance claim the respondent examined herself as P.W.1 & examined P.W.2 and marked the documents Ex.P.1 to Ex.P.6. The petitioner examined himself as R.W.1 and marked Ex.R.1 to Ex.R.3. The witness document C.W.1 also marked. The learned trial Judge, on available evidence and on the basis of the submission made by the petitioner's counsel and the



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respondent's counsel allowed the maintenance petition and granted maintenance of Rs.6,000/- to the respondent. Challenging the same, the petitioner/husband filed this revision.

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

5.1. The Court below failed to consider that the respondent's maintenance claim is not maintainable after the respondent obtained divorce decree against the petitioner in HMOP.No.17 of 2021 on 19.01.2023.

5.2. The Court below failed to consider that the petitioner is incurring medical expenditure for his amputated legs and the respondent and her family has sufficient income to meet her monthly maintenance. Further, the petitioner also liable to pay the instalment to meet the purchase of the artificial leg.

6.1. The learned counsel for the respondent submitted that the respondent got divorce is not a ground to disown the liability of the payment of maintenance till her remarriage as per Section 125 Cr.P.C., Hence, the petitioner's plea that maintenance claim petition is not maintainable on the account of the divorce granted by the competent Court is not correct.



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6.2. The petitioner has not disputed the monthly salary of Rs.40,000/- and the Court below taking into consideration of the medical expenditure incurred by him for amputation of legs and the other circumstances, only granted Rs. 6,000/- as a monthly maintenance and hence, the same is not liable to be interfered with.

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

8. Marriage between the petitioner and the respondent that took place on 08.06.2015 is admitted. The respondent is a deaf and dumb and she filed HMOP.No.17 of 2021 on the ground that she was harassed by the petitioner and his family member on account of her infirmities. She also got divorce. Even divorcee is entitled to claim maintenance till her remarriage as per Section 125 of Cr.P.C., The Hon'ble Supreme Court in ***Swapan Kumar Banerjee v. State of W.B.***, (2020) 19 SCC 342 : (2021) 3 SCC (Cri) 803 : 2019 SCC OnLine SC 1263 at page 346 interpreted the Section 125 of Cr.P.C., and held that even divorcee entitled to claim maintenance.



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“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 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.”

9. In view of the above circumstances, plea of the petitioner that she got divorce and hence, she is not entitled to get maintenance is not accepted.

10. Even though, the petitioner appeared, no evidence is adduced to prove the income of the respondent. It is well settled that the husband must prove the income of the wife. In this aspect, it is relevant to note that the judgment of the Hon'ble Supreme Court Judgment in **Swapan Kumar Banerjee v. State of W.B.**,



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reported in (2020) 19 SCC 342:-

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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 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.

11. The learned trial Judge, after considering the monthly income of the petitioner by working as a helper in the TNSTC Department and also considering his medical expenditure of the petitioner correctly fixed the monthly maintenance amount as Rs.6,000/-. Hence, this Court finds no perversity in the finding of the learned trial judge to grant maintenance of Rs.6,000/- to the respondent.

12. 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.



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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.”*

13. The learned trial Judge considered the above aspect and correctly fixed the monthly maintenance of Rs.6,000/- to the respondent, 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.6,000/- to the respondent considering the income source of the respondent and needs of the respondent 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.



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14. Accordingly, the order passed by the Family Court, Thanjavur, in M.C.No.9 of 2021 dated 19.01.2023, is hereby confirmed and this Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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K.K.RAMAKRISHNAN, J.

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To

1. The learned Judge,
Family Court,
Thanjavur.
2. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Order made in

CrI.RC(MD). No.876 of 2023
and
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