



Crl.R.C.(MD).No.829 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	30.08.2023
Pronounced On	:	22.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). No.829 of 2022
and
Crl.M.P.(MD).No.10359 of 2022

Murugan

... Petitioner

Vs.

C.Muthulakshmi

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to order dated 06.06.2022 in M.C.No.2 of 2020, on the file of the Family Court, Tirunelveli and to set aside the same.

For Petitioner : Mr.A.Rajaram

For Respondents : Ms.V.Vilma Remy

ORDER

The petitioner has filed this petition against the impugned maintenance award dated 06.06.2022 passed in M.C.No.02 of 2020, granted by the learned Judge, Family Court, Tirunelveli, wherein, the Court below directed to pay



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monthly maintenance of Rs.7,000/- to the respondent ie., his wife.

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2. The petitioner married the respondent on 08.06.2016. After the marriage, the petitioner and the respondent lived in the petitioner's house along with his mother. The petitioner is working as a reporter and getting salary of Rs.40,000/- per month. The petitioner herein divorced his first wife. After marriage, at the instigation of his mother, the petitioner is said to have beaten the respondent and as per the ill advice of his mother, the petitioner repeatedly driven the respondent out from the matrimonial home. Thereafter, elders compromised the petitioner to live along with the respondent. But the petitioner avoided to live with the respondent without any sufficient reason. In the said circumstances, in the month of January 2019 prior to the pongal festival, the petitioner has driven out the respondent from the matrimonial home. All the efforts taken by the elders for reunion, ended in vain. Hence, the respondent herein made a complaint before the jurisdictional police on 12.10.2019. In the enquiry, even though he consented, he did not live with the respondent. Thereafter, the petitioner herein has filed a petition for divorce in H.M.O.P.No.40 of 2020 and the respondent herein has filed a petition for restitution of conjugal rights in H.M.O.P.No.2 of 2020. Two cases were tried simultaneously, and



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divorce was granted in favour of the petitioner. Therafter, the respondent herein has filed a petition in M.C.No.2 of 2020, under Section 125 of Cr.P.C., claiming monthly maintenance.

3.The petitioner filed a counter denying the allegation and stating that the respondent on her own violation, left matrimonial home. The petitioner has been paying interim maintenance of Rs.5,000/- to the respondent every month, during the pendency of the H.M.O.P. In the said circumstances, the present petition is not maintainable. Hence, he seeks for dismissal of the maintenance case.

4.To prove her claim, the respondent examined herself as P.W.1 and marked Ex.P.1 to Ex.P.5. On the side of the petitioner, he examined 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.7,000/- per month to the respondent. Aggrieved over the same, the petitioner filed this criminal revision case



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6.The submissions of the learned counsel for the petitioner are as follows:

(i) The learned trial Judge has failed to consider that the respondent has voluntarily deserted the petitioner and living separately.

(ii) The petitioner has been paying interim maintenance of Rs.5,000/- to the respondent every month, during the pendency of H.M.O.P. Hence, awarding Rs.7,000/- towards maintenance is on the higher side.

(iii) The respondent herein has enough source to take care of her. Hence, she is not entitled to any relief.

(iv) The Interim maintenance paid by the petitioner from 21.12.2020 to 05.04.2022 ought to have been adjusted in the arrears of the maintenance amount.

(v) The trial Judge has failed to consider that the respondent on her own volition left the matrimonial home by deserting her husband and the same is proved in H.M.O.P., proceedings.

7. The learned counsel for the respondent submitted that the learned trial Judge has correctly considered the petition filed under Section 125 Cr.P.C., and awarded a sum of Rs.7,000/- as monthly maintenance. The learned trial Judge correctly held that the petitioner has not established the source of the respondent



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to take care of her. 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 petitioner is working as a part time reporter in Win TV and also doing photographs business. He also has earning capacity. The above facts were considered by the learned trial Judge and granted a sum of Rs.7,000/- as monthly maintenance to the respondent.

10. The petitioner took a plea that the respondent is earning through tailoring. But, he has not produced any evidence to prove the same. When the petitioner took a stand that the respondent earns sufficiently to maintain her, he is duty bound to prove the same. In the absence of any evidence, he is duty bound to maintain her.



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11. To determine the monthly maintenance, the Hon'ble Supreme Court in ***Rajnish v. Neha***, reported in **(2021) 2 SCC 324** laid the following guidelines:

- “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.”*

12. The learned trial Judge considered the above aspect and correctly awarded a sum of Rs.7,000/- as monthly maintenance 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



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from the petitioner, and awarded monthly maintenance of Rs.7,000/- to the respondent considering the earning capacity 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 interfere with the findings of the learned trial Judge. The amount awarded in the maintenance proceeding is adjustable against the amount awarded under H.M.O.P., proceeding.

13. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

22.11.2023

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

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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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