



Crl.R.C.(MD).No.1121 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	:	26.09.2023
Pronounced on	:	02.11.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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and

Crl.M.P.(MD).No.14201 of 2022

Ramadoss

... Petitioner

Vs.

1.Ilayarani

2.Minor.Rakshika Sri

... Respondents

(The respondent No 2 is representing by their mother/natural guardian i.e., the first respondent)

PRAYER: This Criminal Revision Case filed under Section 397 r/w 104 of Cr.P.C., to call for the records pertaining to the order in M.C.No.29 of 2021 dated 06.01.2022, on the file of the Family Court, Ramanathapuram and set aside the same.



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For Petitioner :Mr.J.Pandi Dorai

For Respondents :Mr.R.L.Dhilipan Pandian

ORDER

The petitioner has filed this petition against the impugned maintenance award dated 06.01.2022 passed in M.C.No.29 of 2021, on the file of the learned Judge, Family Court, Ramanathapuram, wherein, the Court below directed to pay monthly maintenance of Rs.9,000/- to the the petitioner's wife and his daughter.

2. The first respondent, alleged that the marriage between her and the revision petitioner was solemnized on 31.08.2014 and due to their wedlock, the second respondent was born to them. Due to some dispute regarding dowry and other aspects, the first respondent herein made a complaint before the Ramanathapuram Police, All Women Police Station and there was an enquiry conducted and in the enquiry, the petitioner undertook to live with the first respondent without demanding any dowry. But he did not take any steps to live with the first respondent and filed a petition in H.M.O.P.No.156 of 2019 for divorce. In the said circumstances,



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the first respondent filed a petition in H.M.O.P.No.122 of 2021 for the restitution of conjugal rights. The first respondent also stated that the petitioner have two houses and the agricultural land and earns more than a sum of Rs.30,000/- per month. He is also doing the real estate business and money lending business. Hence, the respondents demanded a sum of Rs. 20,000/- per month as monthly maintenance.

3. The petitioner filed a counter stating that the first respondent is working in Sriram Finance Company and earning sufficient income to maintain herself.

4. During the trial proceedings, the petitioner admitted that he is ready to pay the maintenance amount to the child alone, because, the first respondent lived with the petitioner only for four months. Therefore, he did not incline to give the maintenance to his wife. The learned trial Judge has granted a sum of Rs.9,000/- as monthly maintenance to the respondents. Challenging the same, the petitioner herein filed this Criminal Revision Case before this Court.



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5. The learned counsel for the petitioner submitted that the first respondent made a complaint against the petitioner and his family members, without any truth in the allegation and hence, he created a situation to live separately from the matrimonial home. Further, the first respondent, without any reasonable cause, left the matrimonial home and made the false complaint against the family members of the petitioner. The petition filed for divorce is pending before the competent Court along with the restitution petition. He would further submit that the award amount is very high and the same should be reduced. Hence, he prays to allow this Criminal Revision Case.

6. The learned counsel for the respondents submitted that considering the admission that the petitioner is ready to pay the amount to maintain his child, the learned trial Judge granted maintenance. The relationship between the petitioner and the first respondent is still in subsistence and there was no legal divorce and hence, she is entitled to claim maintenance from the petitioner. Further, the learned trial Judge correctly ordered to pay the maintenance to the first respondent also. Hence,



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he seeks for dismissal of this Criminal Revision Case.

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

8. Admittedly, there was no dispute regarding the relationship between the parties. The petition filed by the petitioner for divorce is still pending. The first respondent filed a petition for restitution of conjugal rights. In the said circumstances, it is the duty of the petitioner to maintain his wife. The Hon'ble Supreme Court as well as the statutory provisions relating to the marriage and maintenance mandate giving maintenance during the pendency of the H.M.O.P. Proceedings initiated by the husband. In this case, admittedly, the petitioner filed a petition for divorce. Hence, in all aspect, his obligation to maintain her does not cease. Therefore, this Court finds no merit in the contention of the counsel for the petitioner that the first respondent is not entitled to maintenance.



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9. Even though the petitioner took a plea that the first respondent is qualified to work as a teacher, but she has not chosen to work and hence she is not entitled to get maintenance is not acceptable one for the reason that unless the petitioner established that she earns sufficient salary to meet the monthly maintenance, her entitlement to get maintenance does not come to an end.

10. It is the duty of the petitioner to plea and prove the income source of the first respondent and the income derived from the same is sufficient to maintain the respondents. In this case, the petitioner did not establish any independent income source of the first respondent. Hence, the petitioner herein is duty bound to maintain the respondents.

11. The petitioner admitted his liability to pay maintenance to his child namely the second respondent. It is the case of the first respondent that the petitioner is doing money lending business and real estate business and earning more than a sum of Rs.50,000/- per month and she also deposed the same before the Court below. The petitioner failed to adduce any contra



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evidence to disprove the above monthly income. Further he also had not produced any evidence to prove his actual income and hence, the learned trial judge fixed the maintenance of Rs.9,000/- in total to all the respondents and the said order does not warrant any interference.

12. For these reasons, this Court finds no merit in the contention of the petitioner. The award amount is not excessive and there is no legal ground to interfere with the award passed by the trial Court. This Court further holds that since the petition filed by the petitioner for divorce is pending, the petitioner is duty bound to pay the maintenance, more particularly in the backdrop that the petitioner did not establish any income source of the first respondent.

13. Accordingly, the Criminal Revision Case stands dismissed. Consequently, connected Criminal 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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