



Crl.R.C(MD)No.668 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 19.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD)No.668 of 2019

and

Crl.M.P(MD)No.7931 of 2019

K.R.Hari Narayanan

.. Petitioner

Vs.

1.G.J.Radha Maheswari

2.Minor Srisenan

3.Minor Srisha

.. Respondents

[Respondents 2 & 3 are represented by their mother/natural guardian G.J.Radha Maheswari]

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records and set aside the order dated 24.06.2019 passed by the Family Court, Trichy in M.C.No.27 of 2017 and pass further order.

For Petitioner : Mr.T.Lenin Kumar

For Respondents : Mr.H.Lakshmi Shankar



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ORDER

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The petitioner, who is the husband of the first respondent and father of the second and third respondents, filed this revision challenging the impugned maintenance order of granting Rs.22,000/- in favour of the respondents, as maintenance dated 24.06.2019 in M.C.No.27 of 2017 on the file of the Family Court, Trichy.

2. The petitioner earlier married the first respondent on 30.08.2007 as per the Hindu Ritual and customs. The petitioner is running leather business, in the name and style of “Mustang” and earns more than a sum of Rs. 1,00,000/-. According to the respondent, on 23.04.2009, a male child with ***down syndrome*** was born to them. Thereafter, some dispute arose between them. Subsequently, on 30.03.2015, another female child was born. In the said circumstances, due to strained relationship, both are living separately. The first respondent left the matrimonial home and started living with her parents. Thereafter, the first respondent filed a petition H.M.O.P.No.297 of 2016 for restitution of conjugal right in the interest of child. In spite of that, no offer came from the petitioner. Hence, she filed a petition for maintenance considering her economic condition.



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3. The petitioner herein filed a counter denying the allegation stated in the petition and also disputed the entitlement of the maintenance on the ground that the first respondent is working in a school and also earns sufficiently. Further, he also disputed his income as stated in the petition.

4. To prove the maintenance claim, the first respondent examined herself as P.W.1 and marked Ex.P1 to Ex.P5, and the petitioner herein has examined himself as R.W.1 and marked Ex.R1 and Ex.R2.

5. The learned trial Judge after considering the facts and also the pleadings and evidence before Court granted maintenance of Rs.7,000/- to the first respondent, Rs.8,000/- to the second respondent and a sum of Rs. 7,000/- to the third respondent from the date of filing of the petition. Challenging the same, the husband filed this Criminal Revision Case before this Court.

6. The learned counsel for the petitioner submitted that the first respondent is working in a private school and earns more than a sum of Rs.15,000/- per month. Hence, grant of maintenance Rs.22,000/- is not



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proper. He would further submit that there is no evidence to prove the income of the husband. The above aspect was not considered by the learned trial Judge and seeks to reduce the quantum of maintenance.

7. The learned counsel for the respondent submitted that no evidence was adduced to prove the income of the first respondent. Even though they took a plea that she was working in the private school, no salary certificate was produced. He further submitted that the amount of Rs.22,000/- for three members in the peculiar circumstances of the case is not unreasonable one. The second respondent is afflicted with down syndrome. Therefore, the total award amount is not even sufficient to maintain the boy. In the said circumstances, considering the cost of living and also other aspects, the learned trial Judge has correctly granted maintenance of Rs.22,000/-. Therefore, he seeks for dismissal of this case.

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



9. The petitioner contented that the respondent/wife is working in a Private School. To prove the same, he has not produced any evidence. Mere pleading without any evidence does not amount to proof of fact. When the husband took a plea that the wife earned enough income, he must establish the fact. In this case, he never produced documents or let in oral evidence to prove that the petitioner is working in a private school and the same was fortified by the law laid down by the Hon'ble Supreme Court in the case of **Swapan Kumar Banerjee v. State of W.B.**, reported in (2020) 19 SCC 342,

10. ... 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.

10. Further submission of the learned counsel is that amount itself is not reasonable one. The second respondent was born with down syndrome. This Court takes judicial notice of the above fact and the first respondent will be undergoing lot of pain and suffering to take care of the special child. It not only would incur huge expenditure and also would cause mental stress and also other health issues to the first respondent.



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.*
- 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 educational qualification, job, income and earning capacity of the petitioner/husband and the socio economic status of the parties and also considering the present cost of living, granted maintenance of Rs.22,000/- to the respondent, which is in the



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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.

13. In the result, this Criminal Revision Case is dismissed. The order passed by the learned Judge, Family Court, Trichy, in M.C.No.27 of 2017 dated 24.06.2019 is hereby confirmed. Consequently, connected miscellaneous petition is closed.

19.12.2023

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

To

1. The Family Court,
Trichy.
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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