



Crl.R.C.(MD).No.822of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	21.09.2023
Pronounced on	:	02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). No.822 of 2023
and
Crl.M.P(MD). No.11061 of 2023

Kandhimathinathan

... Petitioner/Respondent

Vs.

1. Vijitha

2. Minor Saishree

(Minor 2nd Petitioner through her Mother 1st Petitioner)

.. Respondents/Petitioners

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and SET ASIDE the Impugned order passed in M.C.No.15 of 2021 dated 30.05.2023, on the file of the Family Court, Tirunelveli.

For Petitioner : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.M.P.Senthil



Crl.R.C.(MD).No.822of 2022

WEB COPY

ORDER

The petitioner has filed this petition against the impugned maintenance award dated 30.05.2021 passed in M.C.No.15 of 2021, granted by the learned Judge, Family Court, Tirunelveli, wherein, the Court below directed to pay monthly maintenance of Rs.25,000/- to the each respondents ie., his wife and daughter.

2. The first respondent alleged that the marriage between her and the revision petitioner was solemnized on 30.01.2019 and due to their wedlock, the second respondent was born to them on 03.10.2019. At the time of marriage, initially, the petitioner worked in the Rajasthan Oil and Gas corporation “*on the basis of 20 days works and 20 days Holidays*”. They resided in a rental house in Tirunelveli. Both resided in the rental house at the time of leave period and after that the first respondent went to the petitioner's parents house. That being so, the first respondent got pregnant and the doctor advised her to take bed rest because of her poor health condition. Even though the first respondent's father informed the same to the petitioner's mother, she alleged to have abused the first respondent and



Crl.R.C.(MD).No.822of 2022

WEB COPY

her father. In spite of the advice of the doctor, the petitioner's mother insisted the first respondent to do hard work. The same was informed to the petitioner, the petitioner without considering the same, made quarrel with the first respondent. On 04.08.2019, the Baby shower function was conducted and the first respondent went to her parental home for delivery. After few months, on 03.10.2019, the second respondent was born. Thereafter, the petitioner got a job in Gatar Petroleum Development for monthly salary as Rs.4,00,000/-. On 02.01.2020, the petitioner came to see the respondents as he had to join the duty on 03.01.2020. At that time, the petitioner picked up a quarrel with the family members of the first respondent and took both the respondents in the mid night to his house. Thereafter, he left India. But, according to the first respondent, the petitioner's mother and family members illtreated her and she left the matrimonial home on 15.08.2020. Thereafter, there is no *bona fide* steps were taken by the petitioner and hence on 29.01.2021, the first respondent gave a complaint before the Perumalpuram Police station claiming maintenance from the petitioner. During enquiry, the petitioner refused to pay the maintenance and hence, the police officers advised to approach the



Crl.R.C.(MD).No.822of 2022

appropriate Court. Hence, the respondent filed a petition claiming monthly maintenance amount of Rs.30,000/- to each respondents. It is also stated in the petition that her father was a retired military man and there is no other income to meet the livelihood.

3. The petitioner herein filed a counter denying the allegation and specifically stated that the petitioner had a love marriage with the first respondent in spite of the skiff objection from the family members of the first respondent. After the marriage, the first respondent's father ill advised her and hence there was a frequent quarrel between the first respondent and the petitioner. He further alleged that the first respondent father demanded entire salary of the petitioner and he stated that he paid Rs.13,00,000/- to the first respondent and her family members. To meet the request of the separate residence, the petitioner arranged the rental house and bought the household articles by incurring more than a sum of Rs.3,00,000/-. In spite of that arrangement, the first respondent refused to live in the separate house and she went to her parental home. The petitioner and the first respondent lived together for only five months and thereafter, she went to her parental house.



Crl.R.C.(MD).No.822of 2022

WEB COPY

In the meantime, there was a compromise before this Court and the petitioner agreed to deposit a sum of Rs.20,000/- as a monthly maintenance. The first respondent is also working in the private concern namely KTC GOVE Enterprises and sufficiently earning to meet out her livelihood. In addition to that the first respondent's father after his retirement from the Ministry service is getting pension and also doing LIC agent Job and getting more than a sum of Rs.30,000/- per month. Even today he is ready to live with her. Hence, he seeks for dismissal of the maintenance case.

4. The first respondent in order to prove the maintenance claim, examined herself as P.W.1 and the manager of the Tamil Nadu Mercantile Bank examined as P.W.2 to show the entry of the salary of the petitioner. In spite of sufficient opportunity given to the petitioner, he failed to appear before Court and hence, on available evidence and on the basis of the submission made by the petitioner's counsel and the respondent's counsel allowed the maintenance petition and granted maintenance of Rs.25,000/- to each respondents. Challenging the same, the present revision came to be filed.



Crl.R.C.(MD).No.822of 2022

WEB COPY

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

(i)The Court below failed to consider that the first respondent never proved the income of the petitioner by producing the salary certificate of the petitioner. The Court below erroneously fixed the maintenance amount only on the basis of the evidence of P.W.2 and Ex.P.8. ie., entry in the pass book of the petitioner.

(ii)The Court below failed to consider that the first respondent father earning more income as an agent of LIC and through pension.

(iii)The Court below failed to see that the first respondent was working in the KTC nagar GOVE enterprises and earning sufficiently to maintain the respondents.

6.The learned counsel for the respondents made the following submissions:

(i)The petitioner has not appeared before the Court below and deposed before the Court to substantiate his case and hence, the petitioner



Crl.R.C.(MD).No.822of 2022

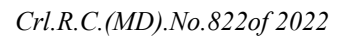
never proved his case of sufficient income generated by the first respondent and her father.

(ii)The income of the first respondent's father is not a ground to deny the maintenance amount.

(iii)The learned trial Judge, correctly placed reliance on the evidence of the bank officials and Ex.P.8 and arrived at a conclusion that the petitioner is earning more than a sum of Rs.3 to 4 lakhs per month as monthly salary. Hence, he seeks for dismissal of this case.

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

8. There is no dispute regarding the relationship between the parties. Marriage on 30.01.2019 is admitted and the birth of the child on 03.10.2019 is also admitted. The first respondent, made a specific plea that the petitioner's monthly income is more than a sum of Rs.3,00,000/-. Even though, she has not produced the salary certificate of the petitioner, he proved the monthly income of the petitioner by examining the bank



Page 8 of 14



Crl.R.C.(MD).No.822of 2022

WEB COPY

9. Even though the petitioner took a stand that the first respondent is working in the KTC Nagar GOVE Enterprises, no evidence is adduced. Hence, mere pleading without evidence is not proof of fact. In this aspect, it is relevant to note that the judgment of the Hon'ble Supreme Court Judgment reported in the case of **Swapan Kumar Banerjee v. State of W.B., (2020) 19 SCC 342** :

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.



Crl.R.C.(MD).No.822of 2022

WEB COPY

10. Applying the above principle and also taking into consideration the adverse inference drawn against the petitioner for his non appearance before the trial Court to depose his case, this Court does not accept the contention of the petitioner's counsel that the first respondent is working in KTC Nagar GOVE Enterprises.

11. The further plea of the petitioner that the first respondent's father is earning more than a sum of Rs.30,000/- per month has also not proved. Even otherwise the same was not a ground to disown his statutory obligation to make payment and the same is fortified by the Hon'ble Supreme Court, reported in the case of **Rajnish v. Neha, (2021) 2 SCC 324**

79. In Manish Jain v. Akanksha Jain [Manish Jain v. Akanksha Jain, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712] this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and



Crl.R.C.(MD).No.822of 2022

could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

The Hon'ble Supreme Court laid the following guidelines in the case of ***Rajnesh v. Neha***, reported in (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.*



Crl.R.C.(MD).No.822of 2022

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 fixed the monthly maintenance of Rs.25,000/- to each respondents, 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.25,000/- each respondents considering the earning capacity of the first respondent and needs of the respondents 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.

13. Accordingly, this Criminal Revision Case is dismissed. Consequently connected criminal miscellaneous petition is also dismissed.

02.11.2023

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



Crl.R.C.(MD).No.822of 2022

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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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Crl.R.C.(MD).No.822of 2022

K.K.RAMAKRISHNAN, J.

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Crl.RC(MD). No.822 of 2023

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Crl.M.P(MD). No.11061 of 2023

02.11.2023