



Crl.R.C.(MD)No.700 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 14.12.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD)No.700 of 2019

1. Princeline Noyal

2. Minor A.P.Noelin Blesto
(Minor/2nd Petitioner rep by 1st Petitioner/
Mother as Guardian) ... Petitioners/Petitioners

Vs.

Anto Selva Bastin ... Respondent/Respondent

Prayer: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records in M.C.No.61 of 2018 on the file of the Hon'ble Family Court, Tirunelveli, Tirunelveli District and Enhance the Maintenance awarded vide Order dated 28.06.2019, as prayed for by the Petitioners herein.

For Petitioners : Mr.K.Veilmuthu

For Respondent : Mr.R.Gowri Shankar,
Legal-Aid-Counsel



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ORDER

The petitioners in M.C.No.61 of 2018 on the file of the Family Court, Tirunelveli filed this petition to enhance the maintenance amount granted in favour of them.

2. The respondent married the first petitioner on 09.02.2017. During the subsistence of marriage, the second respondent was born on 25.10.2017. Due to some dispute, the respondent filed IDOP.No.220 of 2018, on the file of the Family Court, Tirunelveli, seeking the relief of divorce. The petitioner further stated that with the false allegation, he filed a divorce petition and he failed to maintain her and also caused cruelty and hence she left the matrimonial home. The respondent is working as an Automobile Consultant and earning more than Rs.50,000/- per month. Hence, the petitioner filed the maintenance petition claiming Rs.15,000/- for herself and Rs.5000/- for the minor child. The respondent filed a counter denying the allegation and he disputed the paternity of the child and he stated that he only received Rs.7238/- as monthly salary. He also stated that the petitioner is also working as Assistant professor in a private Engineering College and earning more than Rs.30,000/- per



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month. The first petitioner also is having a number of properties and hence, there is no ground to claim the maintenance. To prove the maintenance claim, the petitioner examined herself as PW1 and filed document Ex.P1 to Ex.P3. The respondent examined himself as RW1 and marked Ex.R1.

3. The learned trial Judge, considering the relationship and also the pleadings and evidence adduced before the Court, granted maintenance of Rs.4,000/- each to the petitioners. The petitioner aggrieved over the amount of maintenance, filed this revision petition before this Court.

4. The Criminal Revision was admitted and notice was served to the respondent namely, husband. He appeared through advocate by name Mr.G.Vairamani, but he did not turn up. Hence, this Court appointed legal aid counsel Mr.R.Gowri Sankar. The Legal Aid counsel submitted that the first petitioner has not proved the income of the respondent. Mere pleadings without any evidence does not amount to proof of income. It is the duty of the first petitioner to prove the source of income of the husband. The respondent also pleaded that he earns only



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Rs.8250/-. In the said circumstances, the learned trial Judge correctly granted Rs.8000/- and hence without any means on the part of the respondent, the enhancement petition is not maintainable.

5. This Court has considered the rival submissions made by both side counsel and perused the records and the impugned order passed by the learned trial Judge.

6. This revision is filed only to enhance the maintenance. There is no challenge of the maintenance claim granted in respect of Rs.4000/- each, on the part of the respondent. In the said circumstances, the finding of the learned trial Judge that the petitioners are entitled to the claim of maintenance is confirmed. But the question is, whether the petitioner is entitled to get maintenance more than Rs.4,000/-. Learned counsel for the petitioner submitted that even though the petitioner has not produced any document to show to prove the income of her husband, but in his evidence, it is clear that the respondent's income is more than Rs.8250/- as pleaded by him. Further he did not produce the salary certificate even though it was available with him. In the proof affidavit, he stated that he



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would produce the salary certificate but he did not produce the salary certificate during the course of examination. The learned counsel wants to take adverse inference against the respondent under Section 114 of the Evidence Act and presumed that the income is more than Rs.8250/-.

7. This Court considered the said submission of the learned counsel for the petitioner and this Court has valid reason to accept the said contention of the petitioner. It is the case of the respondent that the petitioner is working as an Assistant Professor in a College for which he has not adduced any evidence. In this case, the respondent admitted that he is working as Automobile Consultant, but he did not produce any evidence to show that his correct monthly income.

8.The Hon'ble Supreme Court has reiterated the principle in the case of *Swapan Kumar Banerjee Vs. State of West Bengal* reported in **2020 19 SCC 342**, that whenever there is a plea of earning by the wife, it is duty of the husband to prove the same. In this case, the husband did not produce any evidence to show her monthly income of Rs. 30,000/-. He also has not produced any evidence to prove his salary. In the said



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circumstances, considering the cost of the living and economic status of the parties and educational expenditure of the second petitioner, this Court inclines to enhance the maintenance amount from Rs.4,000/- to Rs. 7,500/- as monthly maintenance to each petitioners. The enhanced amount is liable to be paid from the date of the decision of this revision.

9. Accordingly, this Criminal Revision Case is allowed in the following terms:

9.1.the award amount of the maintenance of Rs.4000/- granted to the each petitioners is enhanced to Rs.7500/-.

9.2.the said enhancement amount is liable to be paid from the date of order of the revision.

14.12.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
PJL/sbn



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To

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



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K.K.RAMAKRISHNAN, J.

PJL/vsg

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