



Crl.R.C.(MD).No.823 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED:21.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.823 of 2021

and

Crl.M.P.(MD).No.11465 of 2021

Rooban Chakkaravarthy

... Petitioner

Vs.

1.Abinaya

2.Tharun Pranesh (Minor)

... Respondents

(second respondent(minor) represented

by his natural guardian/mother first respondent)

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and allow this criminal revision petition by setting aside the maintenance order dated 03.09.2021 made in M.C.No.2 of 2021 on the file of the Family Court, Ramanathapuram.

For Petitioner : Mr.R.Venkatesh

for Mr.Sivabalan

For Respondents : Mr.R.Udhaya Kumar



Crl.R.C.(MD).No.823 of 2021

WEB COPY

ORDER

The petitioner has filed this petition against the impugned maintenance award dated 03.09.2021 passed in M.C.No.2 of 2021, on the file of the learned Family Court, Ramanathapuram, wherein, the Court below directed the petitioner to pay monthly maintenance of Rs.14,000/- to the respondents.

2.The petitioner married the first respondent on 22.05.2015. During their wed lock, the second respondent was born on 30.05.2016. Thereafter, due to some misunderstanding they were separated and the first respondent started living with her parents. The first respondent made many allegations against the petitioner.

3.The case of the first respondent is that due to the circumstances prevailed in the matrimonial home, she left the matrimonial home unable to bear the torture of her in-laws. In the said circumstances, she filed the petition stating that the petitioner is a Manager in Kodak Mahindra Prime Limited. He earned more than a sum of Rs.50,000/- and also has number of properties in his native



Crl.R.C.(MD).No.823 of 2021

place. Hence, she sought maintenance of Rs.35,000/- per month.

WEB COPY

4.The petitioner herein filed a counter denying the allegation made in the petition regarding the cruelty caused by the petitioner and his family members. He also stated that the first respondent on her own volition left the matrimonial home without any harassment on the part of the petitioner. Hence, the petitioner claims that he is not liable to pay the maintenance amount.

5.The petitioner also stated that since, the first respondent is a teacher and earned sufficiently and she is not eligible to claim maintenance amount from the petitioner. The learned trial Judge considering the documents produced by the first respondent and the evidence and also the evidence of the petitioner, granted maintenance of Rs.8,000/- to the first respondent and a sum of Rs.6,000/- to the second respondent. Challenging the same, the petitioner herein has filed this Criminal Revision Case before this Court.

6.The learned counsel for the petitioner submitted that he is duty bound to pay maintenance to the second respondent/son. But, in view of the circumstances that the first respondent is the teacher and she is earning sufficiently to maintain



Crl.R.C.(MD).No.823 of 2021

WEB COPY
herself, he is not bound to pay maintenance amount to the first respondent, namely, the wife of the petitioner. He also stated that she left the matrimonial home on her own volition and hence, he is not liable to pay maintenance. Therefore, he seeks to allow this case.

7.The learned counsel for the respondents submitted that the earning capacity of the first respondent/wife is not a matter to decline maintenance amount. The Hon'ble Supreme Court has held that even assuming that she is capable and also have the capacity to earn sufficiently, the same may be considered in fixing the quantum of maintenance. Further, the learned counsel for the respondent submitted that the petitioner has not proved that the first respondent earns sufficiently through her profession. The learned trial Judge, considering the circumstances awarded a sum of Rs.8,000/- to the first respondent and sum of Rs.6,000/- to the second respondent as a monthly maintenance.

8.This Court considered the rival submissions made by the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.



Crl.R.C.(MD).No.823 of 2021

WEB COPY

9.The allegation that the first respondent left the matrimonial home on her own violation is not accepted. The petitioner contended that the first respondent/wife is a teacher. To prove the same, he has not produced any evidence. Mere pleading without any evidence does not amount to prove of fact. When the husband took a plea that the wife earned more, he must establish the said fact. In this case, he never produced documents or let in oral evidence to prove that the first respondent is teacher 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.

The petitioner/husband claimed that he received only Rs.37,465/- as take home salary. Hence, he seeks for the reduction of the maintenance amount. From the records, namely as per Ex.P4, his home salary per months is Rs.37,465/- and hence, the award of monthly maintenance of Rs.14,000/- is not excessive.



Crl.R.C.(MD).No.823 of 2021

10. 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.”*

11. The learned trial Judge considering the 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 a sum of Rs.8,000/- to the first respondent and a sum of Rs.6,000/- to the second respondent as monthly maintenance, which is in the 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.



Crl.R.C.(MD).No.823 of 2021

WEB COPY

12. In the result, this Criminal Revision Case is dismissed. The impugned order passed by the learned Judge, Family Court, Ramanathapuram, in M.C.No.2 of 2021 dated 03.09.2021, is hereby confirmed. Consequently, the connected civil miscellaneous petition is closed.

21.12.2023

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

To

- 1.The Family Court,
Ramanathapuram.
- 2.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.R.C.(MD).No.823 of 2021

K.K.RAMAKRISHNAN, J.

sbn

Crl.RC(MD). No.823 of 2021

21.12.2023