



Crl.R.C.(MD).No.789 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). No.789 of 2019
and
Crl.M.P(MD).No.9071 of 2019

K.Chandran

... Petitioner/Respondent

Vs.

1. Anbukarasi

2. Minor Sri Kavi

... Respondents/Petitioners

(Since the 2nd respondent is a minor, she is represented by her mother the 1st respondent herein)

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the impugned Order passed by the learned Family Court, Sivagangai in M.C.No.27 of 2018 dated 29.07.2019 by allowing this Revision.

For Petitioner : Mr.K.K.Kannan

For Respondents : No appearance for R1 & R2



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ORDER

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The petitioner is the husband/respondent in M.C.No.27 of 2018, filed this Revision challenging the maintenance amount of Rs.6,000/- totally to the respondents, granted by the learned Family Court, Sivagangai, in M.C.No.27 of 2018, dated 29.07.2019.

2.The case of the first respondent before the trial Court is that the petitioner entered into marriage with the first respondent on 02.02.2009. Out of the marriage, the second respondent was born on 15.02.2010. The petitioner is a physically disabled person and hence, he got appointment in the Panchayat Office. The respondent left the matrimonial home and living separately as he had illegal contact with another woman. Thereafter, the relationship between the parties become strained and hence, the petitioner filed H.M.O.P.No.38 of 2017 before the Family Court, Sivagangai, seeking divorce and the same was dismissed on 23.01.2018. Since the first respondent was unable to maintain herself and her child, she filed a maintenance petition claiming a monthly maintenance of Rs.6,000/- for each on the specific plea that the petitioner has been receiving monthly salary of more than Rs.25,000/- per month.



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3.The petitioner filed a counter denying allegation and turned the tables saying that the first respondent had illegal affair with some other person. He also stated that he filed a divorce petition in H.M.O.P.No.38 of 2017 and the same was dismissed on 23.01.2018. After dismissal of divorce petition, he filed an appeal in C.M.A.(MD).No.801 of 2018 and the same is pending. He received only a sum of Rs.12,326/- as a monthly salary. He further submitted that he has no other source of income. Hence, he seeks for dismissal of the maintenance petition.

4.To prove the maintenance, the first respondent/wife examined herself as P.W.1 and marked Ex.P1 to Ex.P.6. On the side of the petitioner, he examined himself as R.W.1 and marked Ex.R1.

5.The learned trial Judge considered the evidence and granted maintenance of Rs.6,000/- per month to the respondents. The petitioner/husband challenging the maintenance order filed this revision.

6.The learned counsel appearing for the petitioner submitted that he is ready to pay maintenance to the child. But, he disputed the liability towards the



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first respondent namely, wife. The learned counsel further submitted that the first respondent committed offence of adultery and hence, she is not entitled for maintenance. His specific case is that the first respondent has illegal relationship with one Lingam and hence, relationship between the first respondent and the petitioner became strained and therefore, he filed divorce petition against the first respondent in H.M.O.P.No.38 of 2017 on the ground of adultery and the same was dismissed. The issue of adultery is pending before this Court in C.M.A.No.801 of 2018. The learned trial Judge without deciding the said issue of adultery independently, only on the basis of the dismissal of the H.M.O.P.No. 38 of 2017 decided the issue against the petitioner. Therefore, he seeks for the dismissal of the maintenance petition filed by the wife by allowing this revision.

7. Even though the first respondent was served with the notice, there was no representation on her side.

8. This Court considered the submission of the learned counsel for the petitioner and perused the record and also impugned judgment.



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9. The petitioner raised the plea of adultery in the maintenance proceedings stating that the first respondent has illicit relationship with the one Lingam. He also filed H.M.O.P.No.38 of 2017 against the first respondent seeking divorce on the said allegation. His specific case of adultery was not accepted by the Family Court in the said H.M.O.P.No.38 of 2017. In result, his divorce petition on the ground of adultery was dismissed. The said dismissal order was marked as Ex.P.4 and Ex.P.5 in this proceedings. The learned trial Judge appreciated the evidence adduced in the maintenance proceeding and also considering the decision in H.M.O.P.No.38 of 2017, declined to accept the plea of the petitioner that the first respondent is living in adultery. This Court also perused the records and appreciate the finding of the learned trial Judge and the judgment in H.M.O.P.No.38 of 2017 marked as Ex.P.5. In Ex.P.5, the learned Family Court Judge on appreciation of the evidence found that the allegation of the adultery is not correct. Therefore, this Court finds no error in the decision of the learned Trial Judge in not accepting the petitioner's plea of adultery to disown the liability to pay the maintenance. Apart from that, as per Section 125 Cr.P.C., the husband not only should establish that the wife committed adultery, but also prove that *"she is also living in adultery"*. No evidence was adduced in this proceedings to show that she is living in adultery.



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10.In view of the above discussion, this Court finds no merits to interfere with the finding rendered by the learned trial judge relating to the liability of the petitioner to pay maintenance to the wife.

11.So far as the quantum is concerned, the petitioner has failed to prove his case is that the first respondent was working in the Aruna Water Company and she has been earning Rs.10,000/- as a monthly salary. It is well settled principle that when the husband took a stand that the wife is earning, he should adduce evidence to prove the same as held by the Hon'ble Supreme Court in the case of ***Sunita Kachwaha v. Anil Kachwaha***, reported in ***2014 16 SCC 715***, Paragraph Nos. 7 and 8 which reads as follows:

7.Inability to maintain herself is the precondition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and the



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daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance.

8.The learned counsel for the respondent submitted that the appellant wife is well-qualified, having postgraduate degree in Geography and working as a teacher in Jabalpur and also working in the Health Department. Therefore, she has income of her own and needs no financial support from the respondent. In our considered view, merely because the appellant wife is a qualified postgraduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.

12.The same was reiterated by the Hon'ble Supreme Court in the case of ***Swapan Kumar Banerjee Vs. State of West Bengal*** reported in ***2020 19 SCC 342.***



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13.The petitioner is a Government Servant and his monthly salary is Rs.19,739/- per month. Therefore, the learned trial Judge considering his permanent job and social status and also cost of living etc following guidelines issued by the Hon'ble Supreme Court in the case of ***Rajnesh Vs. Neha***, reported in ***(2021) 2 SCC 324*** , determined the monthly maintenance of the respondents as Rs.3,000/- each:-

- “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.”*



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14.Therefore, this Court finds that the learned trial Judge correctly fixed the monthly maintenance of Rs.3,000/- to the each respondent and the same is reasonable one considering the socio economic status of the parties and present day cost of living. Therefore, this Court does not find any ground to interfere with the order of the Court below.

15.Accordingly, this Criminal Revision Case is dismissed by confirming the maintenance order passed by the Family Court, Sivagangai, dated 29.07.2019, in M.C.No.27 of 2018. Consequently, the connected criminal miscellaneous petition is also dismissed.

18.12.2023

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

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To

1. The Judge,
Family Court,
Sivagangai.
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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