



CrI.R.C.(MD).No.794 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

CrI.R.C(MD).No.794 of 2019

and

CrI.M.P(MD).No.9166 of 2019

A.Balakrishnan

... Petitioner/Appellant/Respondent

Vs.

Geetha Tamilselvi

... Respondent/Respondent/ Petitioner

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to call for the records relating to the order made in CrI.A.No.61 of 2018 dated 07.08.2019 on the file of the Additional District & Sessions Court (Fast Track Court), Tenkasi, confirming the order made in M.C.No.22 of 2013, dated 22.05.2018 by the learned Judicial Magistrate, Tenkasi and set aside the same.

For Petitioner : Mr.D.Sadiq Raja

For Respondent : Mr.M.Karthikeya Venkatachalapathy



Crl.R.C.(MD).No.794 of 2019

ORDER

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This Criminal Revision case is filed by the petitioner against the judgment passed by the Additional District & Sessions Court (Fast Track Court), Tenkasi in Crl.A.No.61 of 2018 dated 07.08.2019 confirming the order passed in M.C.No.22 of 2013 on the file of the Judicial Magistrate Court, Tenkasi, dated 22.05.2018, in favour of his wife/respondent.

2. The petitioner herein is the husband and the respondent herein is the wife. The respondent/wife filed M.C.No.22 of 2013 stating that the petitioner married the respondent on 08.04.1992. Out of the wedlock, two female children were born. At the time of marriage, the petitioner was working in the Primary Health Centre. After the birth of two children, he was promoted as Sub Registrar. However, he did not give any amount to maintain the family. The respondent and two children are maintained by the parents of the respondent. Due to which, there was some dispute between the petitioner and the respondent. Hence, the respondent left the matrimonial home and living separately with her parents. The petitioner was working as Sub Registrar and earning a sum of Rs.40,000/-. In the said circumstances, without any income to meet out her livelihood, the respondent filed the maintenance claim in



Crl.R.C.(MD).No.794 of 2019

M.C.No.22 of 2013 before the Judicial Magistrate Court, Tenkasi,
seeking maintenance.

3. The petitioner/husband filed counter stating that the petition is not maintainable. He admitted the relationship between him and the respondent. The jewels, which were given to the respondent as sridhanas at the time of marriage are in the hands of the respondent. The allegation of the respondent that he never maintained the respondent and the children is false. Keeping some amount for his own expenses, he sent the balance amount to the respondent without fail. Even when he was working in Karaikudi, he arranged a separate house for rent and called the respondent to come to Karaikudi. But, the same was refused by the respondent. Therefore, the respondent on her own volition, left the matrimonial home and living with her parents. When there is no allegation of dowry harassment, cruelty, pledging of jewels against the petitioner, the offence under Section 12 of Domestic Violence Act would not attract against the petitioner. Therefore, he seeks for dismissal of the maintenance petition.



Crl.R.C.(MD).No.794 of 2019

4. The learned trial Judge after considering the oral evidence of the respondent and the petitioner and Ex.P.1 to Ex.P.4 and Ex.R.1 to Ex.R12, granted maintenance of Rs.15,000/- per month to the respondent and her children and also gave a finding that there was Domestic Violence on the part of the petitioner.

5. Challenging the same, the petitioner filed an appeal before the Additional District & Sessions Court (Fast Track Court), Tenkasi in Crl.A.No.61 of 2018. The learned Appellate Judge re-appreciated the evidence and also perused the records and confirmed the trial Court judgment by its order 07.08.2019. Challenging the concurrent finding, the petitioner filed this Revision.

6. The learned counsel for the petitioner submitted that grant of maintenance of Rs.15,000/- is not legally maintainable since during the pendency of the proceeding, he was suspended and he was not permitted to retire from service due to the pendency of the proceedings. He is receiving only provisional pension of Rs.22,860/-. In the said provisional pension, he has to pay many dues. Hence, he gets only a sum of Rs.3,000/-. Hence, he seeks for allowing this petition by setting aside the order of granting maintenance.



Crl.R.C.(MD).No.794 of 2019

7. The learned counsel for the respondent submitted that the petitioner even though received provisional pension, has got a valuable house at Tenkasi and Theni. Further, in order to lead lavish life, he purchased a car by obtaining loan and also obtained other loans. The learned trial Judge after considering the income of the petitioner granted only a minimum amount as maintenance i.e., Rs.15,000/- for three persons (respondent and two female children). Therefore, the order of the learned trial Judge is in accordance with law and hence, he seeks for dismissal of this petition by confirming the maintenance award passed by the Court below.

8. This Court considered the submission of the both parties and perused the records and the impugned order.

9. Admittedly, there is no dispute relating to the relationship between the parties. Even though the petitioner submitted that he was suspended, now, he was allowed to retire, subject to the result of departmental proceedings. He is receiving only provisional pension. Considering the possession of immovable properties in Tenkasi and Theni, this Court is not inclined to accept the contention of the petitioner that he is not liable to pay maintenance to the respondent and her children.



Crl.R.C.(MD).No.794 of 2019

10. The petitioner admitted that he received the provisional pension amount of Rs.22,860/- per month. He also admitted that he has immovable properties in his name. Hence, he has sufficient income to maintain the respondent and her children. The learned trial Judge considering the present day cost of living and Social Status of the party, granted only reasonable amount of Rs.15,000/- as monthly maintenance to the respondent and her two children. The said award itself is very meagre while comparing the living cost of the present day. Hence, this Court does not find any perversity in the order passed by the learned trial Judge.

11. It is well settled principle that the petitioner is duty bound to maintain the respondent and his children. When the trial Court considered all the aspects in granting maintenance, this Court can not interfere in the quantum of maintenance as held by the Hon'ble Supreme Court judgment in the case of **Rajathi v. C. Ganesan** reported in **AIR 1999 SC 2374 :-**

“12. It was not necessary for the High Court to examine the whole evidence threadbare to exercise jurisdiction under Section 482 of the Code. Rather in a case under Section 125 of the Code the trial court is to take a prima facie view of the matter and it is not necessary for the Court to go into the



Crl.R.C.(MD).No.794 of 2019

matrimonial disputes between the parties in detail. The section provides maintenance at the rate of Rs 500 per month. There is an outcry that this amount is too small. In the present case, however, we are quite surprised that the Court granted a paltry amount of Rs 200 per month as maintenance which was confirmed in the revision by the Sessions Court and the High Court thought it fit to interfere under Section 482 of the Code in exercise of its inherent jurisdiction.”

12. Accordingly, this Criminal Revision Case is dismissed and the judgment passed by the Additional District & Sessions Court (Fast Track Court), Tenkasi in Crl.A.No.61 of 2018, dated 07.08.2019, confirming the order passed in M.C.No.22 of 2013 on the file of the Judicial Magistrate Court, Tenkasi, dated 22.05.2018, is confirmed. The petitioner is directed to deposit the entire arrears amount after deducting the amount already paid. Consequently, the connected miscellaneous petition is closed.

14.12.2023

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



Crl.R.C.(MD).No.794 of 2019

To

1. The Judicial Magistrate Court,
Tenkasi.
2. The Additional District & Sessions Court (Fast Track Court),
Tenkasi.
3. The Section Officer,
Record Section (Crl.)
Madurai Bench of Madras High Court, Madurai.



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Crl.R.C.(MD).No.794 of 2019

K.K. RAMAKRISHNAN. J.,

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Crl.R.C(MD).No.794 of 2019
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14.12.2023