



Crl.R.C.(MD)No.921 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 14.12.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD)No.921 of 2021

and

Crl.MP(MD)No.10977 of 2021

Ganeshraj

... Petitioner/Respondent

Vs.

1. Divyabharathy

2. Minor Aaruthran

(2nd respondent represented by his
guardian/mother/1st respondent)

.. Respondents/Appellants

PRAYER: Criminal Revision Petition has been filed under Section 397
r/w 401 of Cr.P.C., to call for the records relating to the order passed by
the Family Court, Ramanathapuram in M.C.No.24/2020 dated
25.03.2021 and set aside the same and allow this Revision Petition.

For Petitioner : Mr.K.Sathish Kumar

For Respondents : Mr.B.Arun



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ORDER

This petition is filed to set aside the order of the Family Court, Ramanathapuram in M.C.No.24/2020 dated 25.03.2021.

2. The petitioner is the husband. The first respondent is the wife of the petitioner and the second respondent is their son. On 31.08.2017, the marriage between the petitioner and the first respondent was solemnized. Out of the wedlock, the second respondent was born. Due to some matrimonial dispute, the petitioner sent his wife away to her parental home. He did not even come to see the newborn child. Thereafter, he was united with his wife and even after reunion he harassed her by taking her jewels for his business investment and did not return the same. Therefore some disputes arose between them. Due to which she gave a complaint before the respondent police. Since she has to take care of her child and aged parents, she was not able to go to any job for her sustenance. Hence, she filed maintenance petition before the trial Court seeking maintenance for herself and the child.



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3. The learned trial Judge, after analysing the evidence, granted maintenance of Rs.6,000/- to the first respondent and Rs.5,000/- to the second respondent child, aged about two years. Challenging the same. the petitioner filed the revision and the learned counsel for the petitioner submitted that the petitioner received only Rs.13,473/- per month. Hence grant of maintenance of Rs.11,000/- is too high. The learned counsel for the petitioner further submitted that before filing the maintenance petition, he was paying Rs.4000/- each per month, to the petitioners through the landlord of the respondent. Hence, the grant of Rs.11,000/- is not there is level one. In the said circumstances, he seeks for reduction of the maintenance amount.

4. The learned counsel for the respondents submitted that the petitioner received more than Rs.34,280/- as monthly salary and he is a employee in the Railway Department. In the said circumstances, he has sufficient income to pay the maintenance of Rs.11,000/-. He further submitted that the learned trial Judge considered the above aspect and granted maintenance.



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5. The learned counsel for the petitioner submitted that the first respondent is working as a Teacher and hence grant of maintenance of Rs.6000/- to her is not legally correct.

6. The learned counsel for the respondents submitted that the said submission is not proved through legal evidence.

7. This Court has considered the rival submissions made by both side counsel and perused the records.

8. The petitioner did not dispute the relationship and his employment with the Railway Department. He only stated that he received Rs.13,473/- as monthly salary. This Court perused the salary certificate. In the salary certificate, it is mentioned that, there is some deduction towards some other liability. But receipt of amount of Rs.13,473/- can not be the bench mark to grant of maintenance amount. Hence, the learned trial Judge granted Rs.11,000/-. The said amount was determined by the learned trial Judge by considering the cost of living for the present date, the educational expenditure and the social status of the



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parties. The same was in accordance with the following guidelines issued by the Hon'ble Supreme Court in ***Rajnesh v. Neha***, reported in **(2021) 2 SCC 324** laid the following guidelines:

- “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.”*

9. As per the guidelines, the learned trial Judge correctly considered the economic status and the cost of living etc. The awarded



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amount is a reasonable one. In the said circumstances, this Court is not inclined to interfere with the quantum of maintenance. The learned counsel for the petitioner submitted that the first respondent is a B.A., B.Ed., Degree holder and she is working in a private school and earning more than Rs.10,000/- per month. To substantiate the same, no documents and oral evidence was adduced by the petitioner 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.

It is the duty of the husband to prove the income of the wife. There is no legal evidence for the same and hence in this respect also, this Court is not inclined to accept the prayer of the petitioner.



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10. Therefore, this Court finds no merits in this case and accordingly, this Criminal Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

14.12.2023

NCC : Yes/No

Index : Yes/No

Internet: Yes/No

PJL/sbn

To

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



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K.K.RAMAKRISHNAN, J.

PJL/sbn

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