



Crl.R.C.(MD).No.1019 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.06.2023

Pronounced on : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1019 of 2022

and

Crl.M.P.(MD)No.12827 of 2022

S.R.Vinayaka Kuha Rajagopalan @
Vinayagarjagopalan

... Revision Petitioner/
Respondent

Vs.

1. P.Anuradha

2. Minor Harish Raghav
represented through by his mother,
guardian P.Anuradha/1st respondent

... Respondents/Petitioners

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Code of Criminal Procedure, to call for the records and set aside the order dated 01.09.2022 made in M.C.No.3 of 2018 on the file of the learned Family Court, Srivilliputhur.

For Petitioner : Mr.T.P.Sri Jeya

For R1 : Mr.M.Thirunavukkarasu



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ORDER

This Criminal Revision is directed against the order passed in M.C.No.3 of 2018 dated 01.09.2022 on the file of the Family Court, Srivilliputtur, granting maintenance under Section 125 Cr.P.C.

For the sake of convenience and brevity, the parties herein will be referred as per their status / ranking in the trial Court.

2. The facts not in dispute are that the marriage between the first petitioner and the respondent was solemnized on 31.05.2015 as per the Hindu Rites and Customs at Kumarasamy Raja Marriage Hall in Rajapalayam, that due to their wedlock, a female child was born on 12.10.2007 and due to ill health, died on 14.10.2007, that they were blessed with a boy, born on 18.08.2009 and that subsequently, due to their misunderstanding, both of them are living separately.

3. It is not in dispute that the respondent had studied B.E., M.B.A., and the first petitioner is a Doctorate in Agricultural Entomology from Tamil Nadu Agricultural University, Coimbatore. It is also not in dispute



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that the second petitioner was a mentally retarded boy aged 8 years at the time of filing the petition and is studying in the school for disabled.

4. The first petitioner for herself and for her minor son/second petitioner has laid the maintenance claim by alleging that the respondent has failed to give monetary assistance for the treatment of the second petitioner, that the respondent had obtained Rs.10 lakhs from the father of the first petitioner for purchasing a house at Chennai and subsequently, did not repay the amount, that when the first petitioner suggested for further treatment for the second petitioner, the respondent informed that the child can be killed than giving treatment by spending money and hence, the first petitioner was put to mental agony, that the respondent having the habit of consuming liquor has been leading to a wayward life, that the respondent had also beaten up the first petitioner without any reason and sent her out to her parents house and that since the respondent has failed to maintain her and her son, she was constrained to laid the above petition.

5. It is further case of the petitioners that the respondent is working in Chennai and is getting monthly salary of Rs.1,25,000/-, that the



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respondent is owning several properties in Virudhunagar and Tirunelveli District worth of more than Rs.1 crore and is getting Rs.80,000/- per month from the said properties, that the respondent is having sufficient means and income to pay maintenance to the petitioners and that the petitioners are in need of Rs.20,000/- per month each and Rs.25,000/- per month towards medical expenses of the second petitioner.

6. The respondent has filed a counter statement disputing the petitioners' averments and further stated that the first petitioner alone had voluntarily left the matrimonial home by taking away of her jewels and household articles with her, that the first petitioner is an adamant and quarrelsome in nature and used to pick up quarrel with the respondent every day without any reason or cause and she has been dancing to the tunes of her father, that the respondent had spent nearly Rs.2 lakhs towards treatment expenses of the second petitioner and he used to pay frequent visit to see the petitioners and to take care of them, that when the respondent had requested the first petitioner to come to Chennai for better treatment for the second petitioner, she bluntly refused, that the respondent has never borrowed Rs.10 lakhs from the first petitioner's father at any



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point of time and never insisted the first petitioner to kill the second petitioner and that since the first petitioner having Doctorate is highly qualified and capable of earning, she is not entitled to claim maintenance.

7. During the trial, the first petitioner has examined herself as P.W.1 and the servant looking after the second petitioner Tmt.Annalakshmi as P.W.2 and exhibited 11 documents as Ex.P.1 to Ex.P.11. The respondent has adduced neither oral nor documentary evidence.

8. The learned Judge of Family Court, upon considering the evidence both oral and documentary and on hearing the arguments on both the sides, has passed the impugned order dated 01.09.2022 rejecting the claim of the first petitioner, but granted maintenance to the second petitioner and thereby directed the respondent to pay monthly maintenance of Rs.25,000/- per month to the second petitioner from the date of petition until further orders. Aggrieved by the said order of granting maintenance to the second petitioner, the husband has come forward with the present revision.



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9. It is also not in dispute that the first petitioner has filed a petition in HMOP.No.114 of 2016 before the Family Court, Srivilliputtur for dissolution of marriage, that since the respondent had remained exparte, divorce was ordered on 01.08.2017 and that the respondent has filed an application in I.A.No.29 of 2018 for setting aside the exparte judgment and the same is pending. It is also not in dispute that the first petitioner has filed a suit in O.S.No.53 of 2014 claiming maintenance and the same is pending on the file of the Subordinate Court, Srivilliputtur.

10. Since the first petitioner, who is possessing Doctorate in Agricultural Entomology, is working and getting income, her claim for maintenance was rejected by the trial Court. Admittedly, the first petitioner has not challenged the said order. Now the only dispute is with respect to the maintenance claim of the second petitioner and quantum of maintenance awarded.

11. The learned counsel appearing for the respondent would submit that the trial Court has failed to consider that the first petitioner in her cross-examination would admit that she is highly qualified as a Doctorate in Agricultural Entomology and is drawing a huge salary when compared



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to the respondent, who is without a job, that the petitioners' side witness P.W.2, who is none other than their servant, would depose that the first petitioner had properties and income out of such properties, that the trial Court has also failed to take notice that the first petitioner has failed to produce any evidence with regard to the respondent's avocation and income and that therefore, mulcting liability on the respondent to pay monthly maintenance at Rs.25,000/- to the second petitioner is not proper and is not in accordance with law. He would further submit that the first petitioner has exaggerated the expenditure towards the treatment of the second petitioner and that since the respondent is not having any job or income, the quantum of maintenance arrived at by the trial Court is not only unreasonable, but excessive.

12. The learned counsel appearing for the respondent would further submit that since the first petitioner has already filed a suit in O.S.No.53 of 2014 claiming maintenance, the present application filed under Section 125 Cr.P.C. is very much against the scheme of law and the trial Court, without considering the legal position, has mechanically awarded the maintenance claim.



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13. The Hon'ble Supreme Court in ***Rajnesh Vs. Neha and another*** reported in ***(2021) 2 SCC 324***, considering the issue of overlapping jurisdiction, has settled the legal position that where successive claims for maintenance are made by a party under different statutes, the relevant Court would consider an adjustment or set-off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding, that the applicants have to mandatorily disclose all the previous proceedings and the orders passed therein, in any subsequent proceeding and that if the order passed in the previous proceeding/s requires any modification or variation, the party would be required to move the concerned Court in the previous proceeding. Considering the dictum of the Hon'ble Apex Court, the present objection raised by the respondent is absolutely devoid of merits and the same is liable for rejection.

14. As already pointed out, the second petitioner is a mentally retarded child now aged 11 years and is now under the care and custody of the first petitioner.



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15. It is also not in dispute that the second petitioner is now studying in the school for disabled and that P.W.2 has been appointed to look after the second petitioner.

16. No doubt, the first petitioner claims Rs.45,000/- towards maintenance for the second petitioner. The first petitioner has produced the receipts for the payment of school fees, medical bills and the bonafide certificate issued by the Ritham Special School for the Mentally Challenged Children.

17. Considering the medical condition of the second petitioner, treatment required, want of attendant assistance and schooling, the first petitioner and the respondent, being the parents of the said child, both of them are duty bound to maintain him and hence, the finding of the trial Court that the respondent is liable to pay maintenance cannot be found fault with.

18. Now turning to the quantum of maintenance granted to the second petitioner, the first petitioner has been paying Rs.15,000/- to P.W.2



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as her remuneration. Considering the treatment expenses, schooling expenses and the remuneration for the attendant, fixing the maintenance amount at Rs.25,000/- for the second petitioner cannot said to be unreasonable or excessive.

19. The respondent has not canvassed any other reason or ground to impugned the order of the maintenance. Hence, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

20. In the result, this Criminal Revision is dismissed. Consequently, connected Miscellaneous Petition is closed.

30.06.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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K.MURALI SHANKAR, J.

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Pre-Delivery order made in
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and
Crl.M.P.(MD)No.12827 of 2022

Dated : 30.06.2023