



Crl.RC.(MD).No.1036 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.09.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC.(MD).No.1036 of 2023

and

Crl.M.P.(MD).No.13350 of 2023

R.Suriya

... Petitioner

Vs.

1.Vishali

2.Minor.Thaniskha

... Respondents

(2nd minor respondent is represented through her mother/guardian (ie., 1st respondent)

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the impugned order dated 03.07.2023 made in M.C.No.03 of 2022, on the file of the Additional Chief Judicial Magistrate Court, Madurai and set aside the same.

For Petitioner : Mr.K.Kharikharadas



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ORDER

The petitioner, who is the husband of the first respondent has filed this criminal revision case against the maintenance order passed in M.C.No. 3 of 2022, on the file of the learned Additional Chief Judicial Magistrate, Madurai.

2. The petitioner married the first respondent on 25.05.2018. Out of the marriage, the second respondent was born. Thereafter, due to some dispute, they were separated and the petitioner herein has filed a petition in H.M.O.P.No.86 of 2021 before the Subordinate Court, Madurai, seeking dissolution of marriage. Pending the same, a compromise was arrived at between them and as per the compromise, the petitioner did not adhere to the terms of the compromise and refused to take care of the respondents and hence, once again, she made a complaint before the All Women Police Station, and the same was registered in crime No.06 of 2022. In the mean time, the petitioner herein has filed a petition in H.M.O.P.No.5 of 2022 for restitution of conjugal rights. In the said situation, the respondent without any amount to meet her livelihood, filed the petition claiming maintenance



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under Section 125 of Cr.P.C., before the learned Additional Chief Judicial Magistrate, Madurai.

3.The petitioner herein filed a counter before the trial Court denying all the allegation and specifically stated that he is always ready to live with the first respondent and the first respondent without any *bonafide* reason refused to live with him. He has also stated that he was earning only a sum of Rs.40,000/- per month and his age old mother is suffering from Diabetes and he has a duty to maintain his parents. Even after they entering the compromise, the first respondent has not taken any steps to live with the petitioner. In the said circumstances, the petitioner also filed a guardian original petition before the learned First Additional District Judge, Madurai in G.W.O.P.No.147 of 2022. Therefore, he seeks for dismissal.

4.The learned trial Judge after considering documents marked as Ex.P1 to Ex.P15 and the evidence of the respondent, namely, P.W.1 and considering the evidence of R.W.1 has granted maintenance to the respondent stating that the petitioner is bound to pay the monthly



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maintenance of Rs.8,000/- to the first respondent and Rs.10,000/- to the second respondent. Challenging the same, the petitioner herein has filed this present revision case.

5.The learned counsel for the petitioner submitted that right from the beginning, the first respondent was not ready to live with the petitioner and only eager to get maintenance amount. In the said circumstances, the petitioner has filed the petition in G.W.O.P.No.147 of 2022, which is pending before the competent Court. He further stated that the learned trial Judge without considering the fact that the first respondent without any reasonable cause left the matrimonial home and filed the maintenance petition, which is not maintainable in accordance with law has granted maintenance in favour of the first respondent. He would further submit that he is earning a sum of Rs.40,000/- and he has a duty to maintain his mother and also his father who are suffering from paralysis. Therefore, the award granted by the learned trial Judge is also excessive and he seeks to allow this case.



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6.This Court considered the submission made by the learned counsel for the petitioner and also perused the materials available on records and the judgment passed by the Court below.

7.It is the specific case of the first respondent that after the compromise entered in H.M.O.P.No.86 of 2021, the petitioner did not take any steps to live with her and also did not make any payment. In the said circumstances, the first respondent made a complaint before the All Women Police Station. Thereafter, the petitioner filed the petition in H.M.O.P.No.5 of 2022 for restitution of conjugal right. From the above aspect, it is clear that the petitioner is not *bona fide* in filing the petition for restitution of conjugal rights without taking any steps to live with the first respondent. Therefore, this Court finds that the submission of the learned counsel for the petitioner that there was no reasonable cause for the separation of the first respondent is not accepted.

8. From the above fact, it is clear that the first respondent had a valid reason to live away from the petitioner and hence, she is justified in



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invoking Section 125 of Cr.P.C. So far as the quantum is concerned, the petitioner admitted that he was earning a sum of Rs.40,000/- through his business. He is also the B.E.Graduate and supplying two wheeler spare parts and further, his mother is working as a Government teacher and she is earning more than a sum of Rs.90,000/- per month. Therefore, this Court is of the view that the Court below has rightly considered all the above facts and granted maintenance of Rs.18,000/- to the respondents. In the above circumstances of the case, the amount awarded by the trial Court is not exorbitant. Therefore, this Court does not find any merits in the Revision Petition.

9. The claim of the petitioner that the first respondent is working and she has sufficient income from properties is without evidence. Hence, mere pleading without evidence is not proof of fact. In this aspect, it is relevant to note the judgment of the Hon'ble Supreme Court reported in the case of ***Swapan Kumar Banerjee v. State of W.B.***, reported in ***(2020) 19 SCC 342*** :



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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.

10.The Hon'ble Supreme Court laid the following guidelines in the case of **Rajnesh v. Neha**, reported in **(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."*



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11. The learned trial Judge, after considering the above aspect and also taking into account of the present day cost of living and the educational expenditure of the children, granted reasonable amount of Rs.18,000/- as a monthly maintenance to the respondents. This Court does not find any infirmity and perversity in the impugned order. The Hon'ble Supreme Court repeatedly held that the revisional Court has no jurisdiction to interfere with the quantum of maintenance awarded by the learned trial Judge unless it is perverse. In this case, the learned trial Judge considered the income of the petitioner and decided the issue in accordance with law.

12. For the above said reasons, this Criminal Revision case fails and the same is dismissed. Consequently, connected criminal miscellaneous petition is closed.

19.09.2023

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



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WEB COPY To

- 1.The Additional Chief Judicial Magistrate,
Madurai.
- 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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