



CrI.R.C.(MD).No.923 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.RC(MD)No.923 of 2019

and

CrI.M.P(MD).No.11017 of 2019

Ganesan

.. Petitioner/Respondent

Vs.

1.Malaimagal

.. 1st Respondent/1st Petitioner

2.Minor.Kanimozhi

3.Minor Balakrishnan

.. 2nd & 3rd Respondent/ 2nd & 3rd
Petitioners

(Minors 2nd and 3rd Respondents are represented by their natural guardian mother/ the first respondent)

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the maintenance order passed in M.C.No.35 of 2018 dated 14.08.2019 on the file of the Family Court, Sivagangai, by allowing this criminal revision petition.



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For Petitioner : Mr.A.R.Kannappan

For Respondents : Mr.D.Venkatachalam

ORDER

This petition is filed to set aside the order passed in M.C.No.35 of 2018 dated 14.08.2019 on the file of the Family Court, Sivagangai.

2.The marriage between the petitioner and the first respondent was solemnized on 15.09.2005 at the house of the first respondent/wife, Nattarasankottai. Out of the wedlock, the second and third respondents were born. At the time of marriage, the parents of the first respondent gave 45 sovereigns of gold jewels to their daughter, 2 sovereign gold chain, 1 sovereign gold ring, 4 sovereign bracelet to their son-in-law/petitioner and Sridhana and house hold articles and also Rs.50,000/- as cash for purchasing two wheeler. After two months of marriage, the husband went to Foreign country for his job, hence, the wife was living at the matrimonial home for nearly one month. Since she was pregnant, she left her matrimonial home and went to her parental home and second petitioner was born on 13.07.2006. Her husband did not even contact her through phone and he came to India after



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and he was also earning Rs.1,00,000/- per month through money lending business. He did not even maintain the respondents and he did not spend for his children's education. In the said circumstances, he is liable to pay the maintenance of Rs.10,000/- to the first respondent and Rs.5,000/-each to the second and third respondents.

3.The husband denied the allegation made by the first respondent and also specifically denied that he demanded money for starting new business. He further stated that he sent money every month to his wife/first petitioner, when he was earning abroad instead of his parents. His father-in-law kept the money and developed his business and earned more money through the petitioner's foreign earnings which he sent to his wife. She insisted the petitioner to leave from abroad and to start business on his own in India and she also stated that her father is ready with money to start a new business. Hence, he left his job from abroad and came to India and handed over Rs.5,00,000/- to his father-in-law for starting business. But she falsely made allegation against the petitioner that he demanded Rs.10,00,000/- to start a business. He also filed a petition for restitution of conjugal rights in H.M.O.P.No.114/2018 on the file of Family Court, Sivagangai and the same is



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pending. She did not even allow the petitioner to see his children. He further stated that except a tiled roof house at Manamadurai, he had no other properties, which is his ancestral property. He also stated that his wife/first respondent have 4 own houses at Nattarasankottai, 7 Acre agricultural land with two Well, 50 cents of housing plot and 4 plots at Sivagangai and she has all means to maintain herself and her children. He gave all his hard earned money to his wife and his father-in-law and now he is doing coolie work to maintain himself and her mother. Hence, he seeks dismissal of the maintenance claim petition.

4.To prove the maintenance, the petitioner/wife examined herself and her father as P.W.1 and P.W.2 and marked Ex.P1 to Ex.P.6. The respondent/husband examined himself as R.W.1 and never marked any documents.

5.The learned trial Judge considered the evidence and granted maintenance of Rs.4,000/- to the first respondent and Rs.3,000/-each to the second and third respondents. Totally, the maintenance amount is Rs.10,000/. The petitioner/ husband challenging the maintenance order filed this revision.



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6.The learned counsel appearing for the petitioner submitted that the first respondent has sufficient means to maintain herself and also she has her own land and income from other sources. He also stated that no document was produced to show his income. Without any document, the learned trial Judge granted maintenance of Rs.10,000/- to the respondents. Hence, he seeks for indulgence in the quantum of maintenance.

7.The learned counsel appearing for the respondents submitted that the learned trial judge correctly considered the economic status of the petitioner and granted maintenance of Rs.10,000/- to the respondents. The maintenance amount of Rs.10,000/- is reasonable one and hence, there is no reason to interfere with the order passed by the learned trial judge.

8.This Court has considered the rival submissions made by both side and perused the impugned maintenance order.

9.The contention of the learned counsel appearing for the petitioner is that the wife has not produced any document to prove his income. Without proof of income, the maintenance amount of Rs.10,000/- to the respondents is unreasonable one. The duty of the learned counsel appearing for the respondent is that he has to enclose entire records, but he has not disclosed



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the assets and also the true income of the petitioner. In the absence of the evidence to show his income, the Honourable Supreme Court held that on the basis of the plea and other circumstances, the Court can fix the amount for monthly maintenance. In the above circumstances, the learned trial judge considering the fact that the petitioner has a house and also he worked in a foreign country and also doing money lending business, accepted the case of the first respondent that he earned more than Rs.1 lakhs and granted only Rs.10,000/- to the respondents. In the absence of any other contra evidence, the learned trial judge correctly fixed maintenance of Rs.10,000/-. In this case, the learned Judicial Magistrate, only granted a sum of Rs.10,000/- as monthly maintenance, which, according to this Court, is very meager. The petitioner is the husband of the first respondent and he is duty bound to maintain his wife. In the said circumstances, the order passed by the learned trial Judge is in accordance with law. In all aspect, the learned trial Judge, correctly decided the issue. To determine the monthly maintenance, the Hon'ble Supreme Court in the case of ***Rajnish v. Neha***, reported in ***(2021) 2 SCC 324*** has laid the following guidelines:



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- “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.”*

10. The learned trial Judge considered the above aspect and correctly awarded a sum of Rs.10,000/- as monthly maintenance to the respondents, on the basis of the oral and documentary evidence. Since in all aspect the learned trial Judge correctly decided the entitlement of the respondent to claim maintenance from the petitioner, and awarded monthly



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maintenance of Rs.10,000/- to the respondents considering the earning capacity of the respondents and needs of the respondents and socio economic status of the parties and present day cost of living and this Court does not find any ground to interfere with the findings of the learned trial Judge.

11.Accordingly, this Criminal Revision Case is dismissed and the maintenance order passed in M.C.No.35 of 2018 dated 14.08.2019 on the file of the Family Court, Sivagangai, is confirmed. Consequently, the connected criminal miscellaneous petition is closed.

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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