



Crl.R.C.(MD).No.1055 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.09.2023

Delivered on : 02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.1055 of 2022
and
Crl.M.P.(MD)No.13337 of 2022

S.Balasubramanian

.. Petitioner/Respondent

Vs.

Keerthana

.. Respondent/Petitioner

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records in M.C.No.1 of 2020 on the file of the learned Judge, Family Court, Sivagangai, dated 06.09.2022 and set aside the judgments of the trial Court.

For Petitioner : Mr.S.Prabha,
for Mr.D.Ramesh Kumar

For Respondent : Mr.R.J.Karthick



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ORDER

The petitioner has filed this petition against the impugned maintenance award dated 06.09.2022 passed in M.C.No.1 of 2020, on the file of the learned Judge, Family Court, Sivagangai, wherein, the Court below directed to pay monthly maintenance of Rs.10,000/- to the respondent/wife.

2. The respondent/wife case in M.C.No.1 of 2020:

The petitioner married the respondent on 08.02.2015. The petitioner has been working as Junior Engineer in the BSNL Department and earning a sum of Rs.70,000/- as monthly salary. After marriage, the petitioner and the respondent were living in Chennai. At that time, the petitioner did not maintain his wife/respondent herein and he borrowed money from various persons and spent for his lavishness. In order to settle the said amount, he demanded Rs.10,00,000/- as dowry from the respondent due to which, a dispute arose between the petitioner and the respondent. Hence, the respondent caused cruelty to the petitioner and then he received the 'Mangal Suthra' on 31.05.2019 on compulsion and assaulted the respondent. Therefore, she left the matrimonial home and is



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living with her parents. In the said circumstances, she filed the maintenance claim petition stating that initially the respondent was working in the HDFC Bank on temporary basis. With the said income, she lived with the petitioner. Thereafter, she lost the job and hence, she filed the maintenance claim petition.

2.1. The case of the petitioner/husband in M.C.No.1 of 2020:

In the maintenance petition, the husband filed a counter denying all the allegation and also specifically stated that the respondent/wife is working in HDFC Bank and earning sufficient income to maintain herself. He further stated in the counter that the respondent/wife harassed him mentally and physically and hence, he filed the HMOP.No.697 of 2016 seeking divorce and the respondent/wife filed a petition for restitution of conjugal rights and also the maintenance petition. The petitioner further alleged that the respondent/wife has owned number of properties in her village and she is working in HDFC Bank and also earning more than Rs.20,000/- as monthly salary. Therefore, in all aspects, he seeks for dismissal of the claim petition.



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3. The learned trial Judge considered the documents Ex.P1 to Ex.P5 and Ex.R1-xerox copy of the salary slip and also the evidence of P.W.1(wife) and the evidence of R.W.1, and granted the maintenance.

4. Considering the fact that the admitted relationship and the divorce petition is pending and considering that the petitioner/husband is a BSNL employee and receiving Rs.70,000/- as monthly income, the trial Court granted maintenance of Rs.10,000/- per month. Challenging the same, the petitioner filed this revision petition and contended that the trial Court granted maintenance without considering the fact that the respondent/wife is working in HDFC Bank and hence, the said maintenance award is not legally maintainable.

5. The learned counsel for the respondent/wife submitted that he did not produce any evidence to prove the job of the respondent/wife. Hence, the learned trial Judge correctly granted maintenance of Rs. 10,000/- per month.



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WEB COPY 6. This Court has considered the rival submission made by the both parties and perused the materials available on record.

7. The petitioner contented that the respondent/wife is working in the HDFC Bank. To prove the same, he has not produced any evidence. Mere pleading without any evidence does not amount to prove of fact. When the husband took a plea that the wife earned more, he must establish the fact. In this case, he never produced documents and oral evidence to prove that the petitioner is working in the HDFC Bank 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.

The petitioner/husband claimed that he received only Rs.55,000/- as take home salary. Hence, he seeks for the deduction of the maintenance



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amount. From the records, it is seen that as per Ex.R1, if the amount of Rs.55,066/- is taken as monthly income of the petitioner, the award of monthly maintenance as Rs.10,000/- is not excessive.

8. The Hon'ble Supreme Court issued the following guidelines in the case of ***Rajnesh v. Neha, (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.”*

9. The learned trial Judge considering the education qualification, job, income and earning capacity of the petitioner/husband and the social economic status of the parties and also considering the present cost of



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living, granted maintenance of Rs.10,000/-, which is in the considered opinion of this Court, is not exorbitant. Hence, this Court does not find any merit in this petition and this Criminal Revision Petition is liable to be dismissed.

10. In the result, this Criminal Revision Case is dismissed.
Consequently, connected miscellaneous petition is closed.

02.11.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
PJJ

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.

PJL

**Predelivery order made in
Crl.RC(MD)No.1055 of 2022**

02.11.2023