



Crl.R.C.(MD).No.1085 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	26.09.2023
Pronounced on	:	02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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and

Crl.M.P.(MD).No.13877 of 2022

Jahubar Hussain

... Petitioner

Vs.

1.Riyana Fathima

2.Alsafa

3.Alsameer Ahamed

4.Rabeeka Umaisa

... Respondents

(The respondent Nos 2 to 4 are representing by their mother/natural guardian i.e., the first respondent)

PRAYER: This Criminal Revision Case filed under Section 397 r/w 104 of Cr.P.C., to call for the records pertaining to the order dated 13.09.2022 passed in M.C.No.31 of 2014, on the file of the learned Chief Judicial Magistrate Court, Ramanathapuram District and to set aside the same by



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allowing this Criminal Revision Case.

For Petitioner :Mr.R.Shankar Ganesh

For Respondents :Mr.A.C.Ganasen

ORDER

This Criminal Revision Case has been filed against the order impugned in M.C.No.31 of 2014, dated 13.09.2022, on the file of the Chief Judicial Magistrate Court, Ramanathapuram.

2. The first respondent stated that the marriage between her and the revision petitioner was solemnized on 16.09.2004 and due to their wedlock, the respondents 2 to 4 were born to them. Due to some dispute, they got separated. The first respondent is unable to maintain herself and her children. Therefore, she has filed an application claiming maintenance for herself and for her minor children under Section 125 of the Code of Criminal Procedure, before the learned Chief Judicial Magistrate, Ramanathapuram District in M.C.No.31 of 2014. The revision petitioner has filed counter statement denying the allegation and admitted the relationship and also the birth of the children. The petitioner denied the allegation made in the petition that he had illegal intimacy with some other persons and also



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denied to have the habit of drinking.

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3. After the filing of maintenance case, an exparte maintenance award was passed on 30.03.2016. On the basis of the interim maintenance award, the execution petition in Crl.M.P.No.9 of 2018 has been filed. Pending the said execution petition, he filed Crl.M.P.No.554 of 2019, to set aside the exparte order passed in the maintenance case and the same was set aside on 07.04.2022 and thereafter, the present impugned order, dated 13.09.2022, came to be passed with direction to pay a sum of Rs.9,500/- to all the respondents.

4. During enquiry, the first respondent has examined herself as P.W.1 and exhibited 4 documents as Ex.P.1 to Ex.P.4. The revision petitioner has examined himself as R.W.1 and exhibited 6 documents as Ex.R.1 to Ex.R.6. The learned Chief Judicial Magistrate, upon considering the evidence available on record and on hearing the arguments of both sides, has passed the impugned order, dated 13.09.2022, holding that the revision petitioner is liable to pay maintenance to the respondents and directed the



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revision petitioner to pay a sum of Rs.9,500/- as monthly maintenance to the respondents from the date of filing of the petition and the maintenance amount should be paid on or before 5th of every English Calender Month and further directed the revision petitioner to pay the entire arrears of maintenance amount within two months from the date of the impugned order. Aggrieved by the said order, the revision petitioner has come forward with the present revision.

5. The learned counsel for the petitioner would submit that the first respondent is not entitled to get maintenance on the ground that there was a serious allegation against her i.e, she has indulged in extra marital affairs with somebody. He would further submit that the first respondent has sufficient income and hence, the claim petition filed by the respondents has to be rejected. The learned trial Judge, erroneously awarded the monthly maintenance. Therefore, he seeks to set aside the order passed by the trial Court.



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6. The learned counsel for the respondents submitted that the petitioner is an auto driver and he is earning more than a sum of Rs.30,000/- per month. Hence, the award passed by the Court below is very reasonable. Hence, he prayed to dismiss this criminal revision case.

7. This Court considered the rival submissions made on either side and perused the materials available on record.

8. There is no dispute regarding the relationship between the parties. Marriage on 16.09.2004 is admitted and the birth of the children/respondent Nos.2 to 4 is also admitted. The petitioner made a specific plea that the first respondent has indulged in extra marital affairs, and the same was not proved. The learned trial Judge, considered the evidence of P.W.1 and R.W.1 and R.W.2 came to a categorical conclusion that the allegation of the petitioner that the first respondent is living in adultery is not proved. The learned trial Judge also gave his reasons to disbelieve the evidence of R.W.2, who has been examined to prove the factum of adultery. This court finds no perversity in the said finding and



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hence this Court is not inclined to interfere in the said finding.

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9. The first respondent, made a specific plea that the petitioner's monthly income is more than a sum of Rs.30,000/-. Even though, the first respondent has not produced any documents to prove the same, the petitioner has not adduced any contra evidence to prove his income. Hence, the learned trial Judge, considering the fact that the petitioner is driving auto, granted maintenance of Rs.9,500/- to the respondents in total. The learned trial Judge, considering the educational expenditure and the present day cost of living and the occupation of the petitioner granted a reasonable amount. 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.*



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- 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 fixed the monthly maintenance of Rs.9,500/- to all the respondents, on the basis of the oral and documentary evidence. Since in all aspects the learned trial Judge correctly decided the entitlement of the respondents to claim maintenance from the petitioner, and reasonably fixed monthly maintenance of Rs.9,500/- to all the respondents considering the earning capacity of the first respondent and needs of the respondents and social economic status of the parties and present day cost of living, this Court does not find any ground to differ with the findings of the learned trial Judge.



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11. For all the reasons, this Criminal Revision Case fails and the same stands dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

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NCC :Yes/No

Index :Yes/No

Internet :Yes/No

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