



Crl.R.C.(MD).No.1136 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.09.2023

Pronounced on : 22.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.1136 of 2022

and

Crl.MP(MD)No.14312 of 2022

R.Manikandan

... Petitioner/Respondent

Vs.

1.P.Sumathi

2.Minor M.S.Ajay

3.Minor M.S.Agul

..... Respondents/Petitioners

(Respondents 2 and 3 are represented by their mother and guardian
namely, the first petitioner)

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the impugned order passed by the Learned Family Court, Karur in M.C.No.7 of 2022 dated 29.08.2022 and set aside the same.

For Petitioner : Mr.S.Vijayakumar

For Respondents : Mr.T.Selvam



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ORDER

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The petitioner has filed this petition against the impugned maintenance award dated 29.08.2022 passed in M.C.No.07 of 2022, granted by the learned Judge, Family Court, Karur, wherein, the Court below directed to pay monthly maintenance of Rs.20,000/- to the respondent ie., his wife and his children.

2.The petitioner is the husband who filed this revision challenging the maintenance order granted by the learned Family Judge, Family Court, Karur in M.C.No.7 of 2022, wherein the learned trial Judge directed the petitioner to pay maintenance of Rs.10,000/- to the first respondent and Rs.5,000/- each to the respondents 2 and 3 till they attain majority. Totally awarded Rs.20,000/- as maintenance.

3. The case of the first respondent is that the petitioner had love marriage with the first respondent on 09.07.2008. The petitioner is a B.Com graduate. At the time of marriage, he was working as a Supervisor in the “Marg Karaikal Port”. After marriage, according to the first respondent, he caused cruelty by demanding dowry. In the said circumstances, the respondents 2 and 3 were born.



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Even though, the petitioner caused harassment to the first respondent, she tolerated all those bickering considering the welfare of the children. But, he did not change his attitude. Hence, she parted company of the petitioner and started to living with her parents. Due to inability to maintain herself and her children, she filed maintenance petition in M.C.No.7 of 2022 before the Family Court, Karur, by claiming a sum of Rs.20,000/- per month to each respondent.

4. The petitioner herein has filed a counter denying the allegation made in the petitioner and specifically stated that the petitioner herself left the matrimonial home and made the false allegation against the petitioner and his family members. He denied the averment that he is earning more than Rs.1,50,000/- per month by doing supply of cement and finance business. He also stated that the first respondent family is very affluent and there is no need to give maintenance to her. Hence, he seeks for dismissal of the maintenance petition.

5. The learned trial Judge after considering the oral evidence of the first respondent and the petitioner and Ex.P.1 to Ex.P.9 and Ex.R.1, granted Rs.10,000/- per month to the first respondent and Rs.5,000/- per month each to the respondents 2 and 3 from the date of filing of the petition.



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6. Aggrieved against the same, the present Revision has been filed by the petitioner.

7. The learned counsel for the petitioner submitted that he has filed divorce petition in HMOP.No.64 of 2022 and the same is pending. The learned trial Judge without any proof of income, only on the basis of the income tax return assessed the income of the petitioner and granted Rs.20,000/- to the respondents as a monthly maintenance, which is not legally correct. The learned counsel for the petitioner further submitted that the respondent's family members have sufficient properties and hence, the learned trial Judge has not taken into consideration of the same. The amount granted by the learned trial Judge is highly excessive and hence, he seeks for setting aside the order.

8. Per contra, the learned counsel for the respondents submitted that the petitioner entered into contract with the Cement Company to transport cement bags and earns a sum of Rs.1,50,000/- per month. Further by doing money lending business also he earns a sum of Rs.50,000/- per month. In addition to that, he also owns house in Periyakulathuppalayam, Karur District and from that house, he gets more than Rs.5,000/- as a rent. Even though the first respondent



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has not produced any evidence to show that the petitioner made contract with the Cement Company to transport the Cement Bags, the learned trial Judge considered Ex.P.9 and Ex.R.1 and other circumstances, namely the petitioner possessed a Car and Two wheeler come to the conclusion that the petitioner has sufficient income to maintain the respondents. Considering the overall circumstances, the learned trial Judge, correctly granted maintenance to the respondent. Hence, it does not warrant any interference and prayed for dismissal of the revision.

9. This Court considered the submission of the both parties and perused the records and the impugned order.

10. The relationship of the parties is admitted. The petitioner has not disputed the income tax return filed by him. In the income tax return, his income was shown as Rs.5,00,000/- .Hence, the learned trial Judge granted maintenance of Rs.20,000/- to all the respondents. The said amount was determined by the learned trial Judge by considering the cost of living for the present date, the educational expenditure and the social status of the parties. The same was in accordance with the following guidelines issued by the Hon'ble Supreme Court



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in ***Rajnesh v. Neha***, reported in ***(2021) 2 SCC 324*** laid the following guidelines:

- “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.”*

The petitioner submitted that the first respondent's family is more affluent is not a ground to disown his liability to make the payment. In this aspect it is relevant to note the Hon'ble Supreme Court Judgement in ***Rajnesh v. Neha***, reported in ***(2021) 2 SCC 324***

79. In Manish Jain v. Akanksha Jain [Manish Jain v. Akanksha Jain, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712] this Court held that the financial position of the



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parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

11. The learned trial Judge considered the above aspect and correctly awarded a sum of Rs.20,000/- as monthly maintenance 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 respondent to claim maintenance from the petitioner, and awarded monthly maintenance of Rs.20,000/- to all the respondents considering the earning capacity of the respondent and needs of the respondent and social economic status of the parties and present day cost of living, this Court does not find any ground to interfere with the findings of the learned trial Judge.



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12. Accordingly, the impugned order passed by the Learned Family Court, Karur in M.C.No.7 of 2022 dated 29.08.2022, is hereby confirmed and the Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is closed.

22.11.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

- 1.The Judge,
Family Court, Karur.
- 2.The Section Officer,
Record Section (Criminal)
Madurai Bench of Madras High Court.



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K.K.RAMAKRISHNAN, J.

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