



CrI.R.C.(MD).No.892 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :27.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.R.C.(MD).No.892 of 2019
and
CrI.M.P.(MD).No.10721 of 2019

Balakrishnan

... Petitioner

Vs.

Thilagavathy

... Respondent

PRAYER : Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the orders of the Family Court, Trichirappalli, in M.C.No.25 of 2015, dated 29.08.2019.

For Petitioner : Mr.V.Singan

For Respondent :Mr.A.Haja Mohideen



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ORDER

The husband has filed this petition against the impugned maintenance award dated 29.08.2019 passed in M.C.No.25 of 2015, on the file of the Family Court, Trichirappalli,, wherein, the Court below directed to pay monthly maintenance of Rs.5,000/- to the respondent namely the petitioner's wife.

2.The petitioner is the husband and the respondent is the wife. The wife filed M.C.No.25 of 2015 on the file of the Family Court, Trichy, stating that the marriage between the petitioner and the respondent took place on 14.12.2011. Thereafter, there was some dispute between the parties and hence, the respondent/wife left the matrimonial home and she is living with her parents. The respondent/wife stated in the petition that the petitioner has sufficient income to maintain her.

3.The petitioner/husband denied the allegations made by the respondent and stated that the wife left the matrimonial home on her own



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without any fault on the part of the petitioner and hence, he seeks dismissal of maintenance.

4.The wife in order to prove maintenance claim examined herself as P.W.1 and exhibited two documents as Ex.P1 and Ex.P2. The revision petitioner has examined himself as R.W1 and also examined R.W2 and exhibited three documents as Exs.R1 to R3. The learned Judge, upon considering the evidence available on record and on hearing the arguments of both sides, passed the impugned order, dated 29.08.2019, holding that the revision petitioner is liable to pay maintenance to the respondent and directed the revision petitioner to pay a sum of Rs.5,000/- as monthly maintenance to the respondent from the date of filing of the petition. Aggrieved by the said order, the revision petitioner has come forward with the present revision.

5.The petitioner raised the following pleas:

5.1.The petitioner filed divorce petition in H.M.O.P.No.66 of 2013 and the same



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was allowed on 30.04.2014. Hence, he is not legally bound to pay the maintenance amount to her.

5.2.He worked as a security and earned Rs.4,500/- per month. In the said circumstances, maintenance claim petition is not maintainable. The same was not considered by the Court below. Hence, he seeks the relief of setting aside the order passed by the learned trial judge.

6.The learned counsel appearing for the respondent submitted that as per the provisions under Section 125 Cr.P.C, and also interpreted by the Honourable supreme Court, even divorcee is entitled to pay the maintenance until her remarriage. In the said circumstances, the respondent is not remarried and hence, she is entitled to claim maintenance. Even though the petitioner stated that he received a sum of Rs.4,500/- as monthly income, he is getting Rs.10,000/- by way of perks. Hence, he is entitled to give



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maintenance amount of Rs.5,000/- and the same was considered by the learned Court below and hence, there is no need for interference by exercising power under Section revision Court.

7.This Court considered the argument of learned counsel for the petitioner and perused the materials available on record and the impugned order passed by the trial Judge.

8.As per Section 125 Cr.P.C and also the judgement of the Honourble Supreme Court in the case of *Manoj Kumar Vs. Champa Devi* reported in *2018 12 SCC 748* and in the case of *Swapan Kumar Banerjee v. State of W.B.*, reported in *2020 19 SCC 342*, the divorcee is also entitled to pay the maintenance. The contention of the petitioner that he is not liable to pay the maintenance amount on the ground of divorce is liable to be rejected.



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9.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.”*

10.The learned trial Judge considered the above aspect and correctly fixed the monthly maintenance of Rs.5,000/- to the respondent, on



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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 reasonably fixed monthly maintenance of Rs.5,000/- to the respondent considering the earning capacity of the petitioner and receipt of the perks, the income of the petitioner 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 differ with the findings of the learned trial Judge.

11. Accordingly, this Criminal Revision Case is dismissed.
Consequently connected criminal miscellaneous petition is also dismissed.

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