



Crl.R.C.(MD).No.1198 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 27.09.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC.(MD).No.1198 of 2022

and

Crl.M.P.(MD).No.14974 of 2022

G.Karupuraja

... Petitioner

Vs.

1.Rajeshwari

2.Minor Pragalathan

3.Minor Nandhini

... Respondents

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records from the lower Court in order dated 17.10.2022, passed in M.C.No.15 of 2022, on the file of the Family Court, Sivagangai District and set aside the same.

For Petitioner : Mr.K.Prabhu

For respondents : Mr.S.Vijayakumar



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ORDER

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This Criminal Revision Case has been filed as against the impugned order in M.C.No.15 of 2022, on the file of the Family Court, Sivagangai District, dated 17.10.2022 and set aside the same.

2. The brief facts of the case is that the petitioner married the first respondent on 08.09.2013. The second and third respondents were born in the wedlock. Due to some matrimonial dispute between the first respondent and the petitioner, the first respondent left the matrimonial home along with her children and started living with her parents. In the mean time, the petitioner herein filed a petition for divorce in H.M.O.P.No.65 of 2021, and the same is pending. Thereafter, the first respondent herein filed a petition under Section 125 Cr.P.C., in M.C.No. 15 of 2022, claiming maintenance from the petitioner, before the Family Court, Sivagangai.

3. After full-fledged trial, the Court below has allowed the petition in part filed by the first respondent and awarded a sum of Rs.5,100/- to



the first respondent and a sum of Rs.3,250/- each to the respondent Nos.2 and 3 towards maintenance amount. Aggrieved over the same, the petitioner herein has filed this Criminal Revision Case before this Court.

4. The learned counsel for the petitioner submitted that the petitioner is receiving a sum of Rs.39,883/- as his salary from which Rs.12,357/- is debited for Railway Co-operative Society loan and a sum of Rs.8,885/- is deducted for Educational Loan and a sum of Rs.9,800/- is deducted as housing loan. Therefore, he is not having sufficient means to maintain himself. The first respondent herein is working in a mill and earning sufficient income and also having properties. Further he has submitted that the first respondent is having illicit intimacy with someone. Hence, he seeks to allow this petition and set aside the impugned order.

5. The learned counsel for the respondent submitted that the petitioner has not produced any evidence to prove the income of the first respondent either from employment or from the source of the movable and immovable property. He also has not stated in the proof affidavit



about the allegation of the illicit intimacy with someone. The petition filed for divorce in H.M.O.P.No.65 of 2021 is pending between the parties. At this stage, the allegation can not be entertained. The learned trial judge awarded only a meagre amount for maintenance and hence, there is no ground to interfere with the impugned order passed by the trial Court.

6. This Court considered the rival submissions on either side and perused the materials available on record and the impugned order.

7. As on date, the marriage is admitted and birth of the children also admitted. Both parties made the rival allegations against each other. The same can be decided in the divorce petition pending between the parties in H.M.O.P.No.65 of 2021, initiated by the petitioner. It is also admitted that he is an employee in the railway department and his salary is around Rs.37,900/-. Even though he pleaded that his take home salary is only a meagre amount after making the payment of housing loan etc, the same is not a ground to disown his liability to pay the maintenance.



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8. The claim of the petitioner that the first respondent is working and she has sufficient income from properties is without evidence. Hence, mere pleading without evidence is not proof of fact. In this aspect, it is relevant to note the judgment of the Hon'ble Supreme Court reported in the case of **Swapan Kumar Banerjee v. State of W.B., (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.

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, after considering the above aspect and also taking into account of the present day cost of living and the educational expenditure of the children, granted reasonable amount of Rs.11,600/- as a monthly maintenance to all the respondents. This Court does not find any infirmity and perversity in the impugned order. The Hon'ble Supreme Court repeatedly held that the revisional Court has no jurisdiction to interfere with the quantum of maintenance awarded by the



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learned trial Judge unless it is perverse. In this case, the learned trial Judge considered the income of the petitioner and decided the issue in accordance with law.

11. For the above said reasons, this Criminal Revision case fails and the same is dismissed. Consequently, connected criminal miscellaneous petition is closed.

27.09.2023

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

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