



Crl.R.C.(MD).No.1230 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 03.03.2023

DELIVERED ON : 09.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.1230 of 2022
and Crl.M.P.(MD).No.15418 of 2022

H.Abdul Hakkim

... Petitioner

Vs.

1.A.Syed Fathima

2.Minor A.Mohammed Jilpath

... Respondents

(2nd respondent represented through the 1st respondent, who is the mother)

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records and set aside the order passed in M.C.No.75 of 2015 on the file of the Family Court, Madurai, dated 28.09.2022.

For Petitioner : Mr.C.Vakeeswaran

For Respondents : Mr.R.Aravindan

ORDER

This Criminal Revision Case has been filed against the order passed in M.C.No.75 of 2015 on the file of the Family Court, Madurai.



2.The facts in brief:

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The marriage between the husband and wife took place on 20.09.2010 as per their customary rites. Right from the marriage, she was insulted, abused and harassed and even the family members of the husband instigated him to harass her. Trouble has also been made by the family members of her husband citing her inability to conceive. Later, she became pregnant because of continuous treatment. They also demanded Rs.5,00,000/-. She was chased away from the house, when she was pregnant. She came to her parental home. Because of the pregnancy also she suffers some sort of medical issues. She also lodged a complaint on 11.06.2014 in All Women Police Station, Tiruparankundram. Over which, case in Crime No.57 of 2014 has been registered. In the meantime, the husband also sent Talaq notice on 11.05.2015 by attaching Demand Draft for Rs.4,500/-. Seeking maintenance amount for herself and the child at the rate of Rs.7,000/- and Rs.3,000/-, the above said petition was filed.

3.That was resisted by the husband stating that only the wife picked up quarrel at the instigation of her parents. Even the birth of the child was not informed to the respondent. When they tried to visit the child, they were insulted, abused. For about 3 years, the wife is living separately without



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proper reason. On 03.03.2015, the wife and her family members locked the house preventing the respondent from coming out. Because of the trouble only, he pronounced Talaq, he is getting only Rs.13,000/- after deductions as monthly salary. The wife has also filed another petition in M.C.No.42 of 2015 before the Additional Mahila Court (Magisterial Level), Madurai, seeking maintenance. For maintenance two separate proceedings have been initiated by her, which is not maintainable.

4.At the conclusion of the trial, the trial Court has passed an order directing the husband to pay a sum of Rs.7,000/- to the wife and Rs.3,000/- to the child. Challenging the same, this revision petition has been preferred.

5.Only quantum is under dispute. Even though the matter was referred to the Mediation Centre, there was no settlement between the parties.

6.The learned counsel for the petitioner would submit that only gross income has been taken into account by the trial Court, while deciding the quantum of maintenance and he is getting net income, which is below the amount that has been fixed by the trial Court. Now he is ready to pay Rs.7,000/- in total to the child and the wife.



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7.Since only quantum is under dispute, we need not go into the other aspects. More particularly, Talaq notice has been sent by the husband. It appears that there is no possibility of reunion between them in the near future.

8.What was the reason for the issue between the husband and wife is not known. As usual allegation and counter allegation have been made against each other. The wife says that only she was harassed, ill-treated by the husband and his family and they also demanded money. But it is the turn of the husband to say that only on petty issue the wife picked up quarrel, an after her delivery she did not return from her parental home. Now, whatever it may be, it is seen that now separation is admitted and as I mentioned earlier, there is no chance for reunion in the near future.

9.The child is also in the care and custody of the wife. But, however, revision petitioner is well employed and getting sufficient salary. Even though it is contended that only the gross amount is taken into account by the trial Court and not the net amount, in respect of the maintenance issues only the gross amount of salary of the parties can be taken into account and not the net amount. Therefore, the contention on the part of the revision



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petitioner that quantum has been fixed on the basis of the gross income, which is not correct, cannot be accepted.

10.Now coming to the next aspect of the filing another matter for similar relief in M.C.No.42 of 2015 on the file of the Additional Mahila Court, (Magisterial Level) Madurai, which is filed seeking various reliefs under the provisions of Protection of women from Domestic Violence Act. The order has been passed on 01.02.2021 by directing the revision petitioner to pay a sum of Rs.4,000/- towards the rental expenses. At the time of enquiry before the trial Court in M.C.No.42 of 2015, the wife informed the Court about the interim order that was passed in Cr.M.P.No. 229 of 2015 in this maintenance case namely M.C.No.75 of 2015 and that was also regularly paid by the revision petitioner was intimated. On that ground, the relief under Section 20 of the Protection of Women from Domestic Violence Act was withdrawn by the wife.

11.So the question which arises for consideration is whether the above said Rs.4,000/- ordered for the purpose of rental expenses can be deducted from the maintenance order. As stated above, the present order has been passed on 28.09.2022. So, much after the order passed in M.C.No.42



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of 2015. But the above said amount was not taken into account by the trial Court. Probably on the ground that the revision petitioner is getting Rs. 85,220/- per month as salary. But after deductions he was getting only Rs. 18,260/- in the month of October 2020. But for the month of January 2020, the gross salary was Rs.85,220/-. But no particulars were available with regard to the deductions. Parties also failed to produce the Assets and liability statement as per the directions issued by the Honourable Supreme Court in the case of *Rajnesh Vs. Neha and another*, reported in **(2021) 2 SCC 324**. So probably on that ground, the above said amount towards rental expenses was not taken into account.

12.A person, who is getting more than Rs.80,000/- per month, now refusing to pay Rs.10,000/- as total maintenance to the wife and child. I am unable to find any reason to maintain this revision. I find absolutely no merit in the revision petition. This revision petition is liable to be dismissed and accordingly, **dismissed**. Consequently, connected miscellaneous petition is closed.

.03.2023

Index : Yes / No
Internet : Yes / No
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To

1. The Judge, Family Court, Madurai.



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G.ILANGO VAN,J.

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