



*Crl.R.C.(MD).No.1279 of 2022*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 19.07.2023

CORAM

**THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

Crl.RC(MD)No.1279 of 2022

1.Elakkiya

2.Minor Thalirmathi

... Petitioners/Petitioners

(The second respondent is represented through  
the first respondent mother and guardian)

Vs.

S.T.Santhakumar

... Respondent/Respondent

**PRAYER:** Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for records and set aside the order of the Family Court, Theni, Theni District, dated 28.11.2022 made in Crl.M.P.No.10 of 2022 in M.C.No.4 of 2022.

For Petitioners : Mr.B.Jeyakumar

For Respondent : No Appearance

**ORDER**

This petition has been filed to set aside the impugned order passed by the Family Court, Theni, Theni District, made in Crl.M.P.No.10 of 2022 in M.C.No.4 of 2022, dated 28.11.2022.



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2.The marriage was solemnized between the first petitioner and the respondent on 21.10.2010 and they have two children. Due to some dispute arose between them, they got separated and living with each one child. The first petitioner is living with her parents along with her children. Hence, she filed maintenance petition in M.C.No.4 of 2022 on the file of the learned Judge, Family Court, Theni, Theni District, along with application in Crl.Mp.No.10 of 2022. In the said proceedings, the respondent has not filed any counter. The learned trial Judge, dismissed the interim maintenance application on the ground that both parties are facing number of litigations and both are living separately with each one child. Challenging the same, the petitioners filed this Revision.

3.The learned counsel for the petitioners submitted that it is the duty of the trial Judge to grant interim maintenance and for that purpose, he placed reliance the judgment of the Tripura High Court in **Sri.Sarmistha Dewan Ghosh Vs. Shri.Milanmoy Dewan (Savitri Vs. Govind Singh Rawat** reported in 1985 4 SCC 337).

4.The reason given by the learned trial Judge is not in accordance with law. It is the duty of the respondent to pay the interim maintenance and also the



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same was not properly considered by the learned trial Judge and seeks indulgence of this Court to set aside the impugned order dated 28.11.2022, passed by the learned Judge, Family Court, Theni, Theni District.

5. Even though notice was served on the respondent, there is no representation on behalf of him and hence, this Court perused the records and pass orders on merits.

6. It is clear that the relationship was admitted and there is no specific denial about the income of the respondent. Further, the specific case of the first petitioner is that the husband is a professor and earn monthly salary. In such circumstance, number of litigations are pending before the Court, is not a ground to grant maintenance.

7. The learned counsel for the petitioner placed reliance the decision of the Hon'ble Supreme Court in **Sri.Sarmistha Dewan Ghosh Vs. Shri.Milanmoy Dewan** stated as follows:-

*30. Although no specific provision has been made in chapter IX Cr.P.C. with regard to payment of interim maintenance allowance, the Apex Court in Savitri W/O Govind*



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*Singh Rawat v. Govind Singh Rawat reported in (1985) 4 SCC 337 has held that Section 125 Cr.P.C. should be interpreted as conferring power by necessary implication on the magistrate to pass an order directing the person against whom such application is made to pay a reasonable sum to the petitioner by way of interim maintenance pending final disposal of the application. The Apex Court in the judgment succinctly held that to prevent grave hardship to the applicant who does not have any means to subsist until the final order is passed, the court may even pass ex-parte order pending service of notice on the other side and in such case the affidavit filed by the applicant may be treated as sufficient prima facie proof of her case. Observation of the Apex Court in this regard in paragraph 6 of the judgment is as follows:*

*“6. In view of the foregoing it is the duty of the court to interpret the provisions in Chapter IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the Magistrate to direct the person against whom an application is made under section 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application. It is quite common that applications made under section 125 of the Code also take several months for being disposed of finally. In order to enjoy the fruits of the proceedings under section 125, the applicant should be alive till the date of the final order and that the applicant can do in a large number of*



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*cases only if an order for payment of interim maintenance is passed by the court. Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim 'ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest' (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist.) (Vide Earl Jowitt's Dictionary of English Law 1959 Edn. P.1797). Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice Caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties. The magistrate, may, however, insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. Such an order may also be made in an appropriate case ex-parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. If a civil court can pass such interim orders on affidavits, there is no reason why a magistrate should not rely on them for the purpose of*



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*issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. Having regard to the nature of the jurisdiction exercised by a magistrate under section 125 of the Code, we feel that the said provision should be interpreted as conferring power by necessary implication on the magistrate to pass an order directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to there pending final disposal of the application. In taking this view we have also taken note of the provisions of section 7 (2)(a) of the Family Courts Act, 1984 (Act No. 66 of 1984) passed recently by Parliament proposing to transfer the jurisdiction exercisable by magistrates under section 125 of the Code to the Family Courts constituted under the said Act.”*

8. In view of the above precedent and as per law, it is the duty of the husband to pay the interim maintenance to his wife and children till the disposal of the litigations. The order of the learned trial Judge is not consonance with the object of interim maintenance. The first petitioner made a *prima facie* case that she is unable to maintain herself and her female child. Even though, he is earning sufficient amount, he has willfully neglected them. On contra, the first petitioner also established that she does not have any income of her own for maintaining herself and her child. Even though the respondent/husband stated that due to



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some medical ground, he has not do any work, to prove the same, he has not produced any evidence. As a husband and as a father, he is duty bound to maintain both the petitioners. The minor second petitioner is a female child and she is only aged about 8 years. It is a paramount duty of the respondent to maintain the female child.

9.Considering the above circumstances, this Court is inclined to set aside the order passed by the Family Court, Theni, Theni District, in Crl.MP.No.10 of 2022 in M.C.No.4 of 2022, dated 28.11.2022 and also inclined to grant Rs.3,500/- as monthly interim maintenance to each petitioner (totally Rs.7,000/-) till the disposal of M.C.No.4 of 2022 on the file of the Family Court, Theni, from the date of filing of Maintenance Case.

10.Accordingly, the proceedings in Crl.M.P.No.10 of 2022 in M.C.No.4 of 2022, on the file of the dated 28.11.2022, is hereby set aside and the Criminal Revision Case is allowed. The respondent is directed to pay the monthly maintenance of Rs.7,000/- to the petitioners regularly.

**19.07.2023**

NCC : Yes/No  
Index : Yes/No  
Internet: Yes/No  
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**K.K.RAMAKRISHNAN,J.**

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To

- 1.The Family Court, Theni,  
Theni District.
- 2.The Section Officer,  
Criminal Records,  
Madurai Bench of Madras High Court, Madurai.

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