



Crl.R.C.(MD).No.1266 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.1266 of 2022

and

Crl.MP(MD)Nos.15886 of 2022 and 1179 of 2023

Panneer Selvam

... Petitioner/Respondent

Vs.

1.Prema

2.Minor Bhuvana sri

... Respondents/Petitioners

(The second respondent is represented by her mother and guardian namely, the first respondent)

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 order made in M.C.No.18 of 2022 on the file of the Family Court, Sivagangai, dated 28.10.2022 and set aside the same as illegal.

For Petitioner : Mr.V.Selvakumar

For Respondents : M/s.R.Padmasini



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ORDER

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The petitioner has filed this petition against the impugned maintenance award dated 28.10.2022 passed in M.C.No.18 of 2022, granted by the learned Judge, Family Court, Sivagangai, wherein, the Court below directed to pay monthly maintenance of Rs.4,500/- to the first respondent ie., his wife and Rs. 5,050/- to the second respondent ie., his daughter.

2.The case of the respondent/wife before the Court below is that the petitioner entered into marriage with the first respondent on 15.07.2012. After marriage, the second respondent was born. Due to harassment and cruelty caused by the petitioner, the respondent left from the matrimonial home and lived with her parent along with child. It is also alleged that the petitioner assaulted the first respondent. In this regard, case in C.C.No.182 of 2017 is pending against the petitioner. In view of the criminal case, the petitioner filed HMOP.No.201 of 2017 seeking relief of restitution of conjugal rights and the same was dismissed on 11.06.2018. Thereafter, he filed a divorce petition in HMOP.No.226 of 2018 and the same was also dismissed on 17.03.2020. In such circumstance, the first respondent filed maintenance petition in M.C.No.18 of 2022 before the Family Court, Sivagangai, by claiming a sum of Rs.15,000/- per



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month to the respondents.

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3. 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.4,500/- per month to the first respondent and Rs.5,050/- per month to the second respondent from the date of filing of the petition.

4. Aggrieved over the same, the present Revision has been filed by the petitioner.

5.1 The learned counsel for the petitioner submitted that the learned trial Judge without ascertaining the income of the petitioner granted maintenance of Rs.9,550/- to the respondents which is not legally maintainable. The learned trial Judge failed to consider that the petitioner is working as night watchman and gets only Rs.7,500/- per month as salary. Therefore, granting maintenance of Rs.9,550/- is not legally sustainable.

5.2. He further submitted that the first respondent is working as teacher in a private School and earning a sum of Rs.20,000/-. Since she has sufficient



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means to maintain herself and the child, there is no need to pay maintenance to the respondents. He further submitted that the first respondent has illegal relationship with another man. Therefore, she is not entitled to the relief of maintenance. Hence, he seeks for dismissal of the order passed by the learned trial Judge by allowing this revision.

6. Per contra, the learned counsel for the respondents submitted that the petitioner is earning more than Rs.3 lakhs from the agricultural land and also working in the private company as a night watchman and gets Rs.10,000/- per month. Apart from that, he has other income sources. Hence, the learned trial Judge, correctly granted maintenance of Rs.9,550/- to the respondents. Further, as held by the learned trial Judge, the petitioner is bound to maintain his family by doing some etc., works. Hence, the impugned order passed by the learned trial Judge does not warrant any interference and prayed for dismissal of the revision.

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



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8. Admittedly, there is no dispute relating to the relationship between the parties. The allegation made against the first respondent was denied by the first respondent. In view of the rival allegation, it is not necessary for this Court to go into the matrimonial disputes between the parties in detail in the summary proceedings. Further, it is settled principle that during the pendency of the divorce proceeding initiated by the husband, he is duty bound to pay maintenance to his wife. Hence, it is the duty of the petitioner to pay maintenance to the first respondent. Since the petitioner admitted the relationship, as a father of the second respondent, he is duty bound to maintain them.

9. The petitioner admitted the relationship. Even though, the petitioner received only Rs.7,500/- per month, there is a specific plea on the side of the respondents that he has capacity to pay the amount. Further, there is a plea that his family members have vast lands and from the lands, there is income of more than Rs.3 lakhs. Even though, the lands stand in the names of his family members, the plea of the first respondent is that the income is appropriated by the petitioner is not disproved by the petitioner in the manner known to law. Hence, the learned trial Judge reasonably granted only Rs.9,550/- as maintenance



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considering the social status of the parties. Hence, this Court does not find any perversity in the order passed by the learned trial Judge.

10. To prove the plea of the petitioner that the first respondent is working as a teacher he did not produce any evidence. He is duty bound to prove the fact that the first respondent is gainfully employed and earn sufficient income to meet their livelihood.

11. It is well settled principle that the petitioner is duty bound to maintain the respondents as a husband and as a father. When the trial Court considered all the aspects in granting maintenance, this Court has no power to interfere in the quantum of maintenance as held by the Hon'ble Supreme Court judgment in **Rajathi v. C. Ganesan reported in AIR 1999 SC 2374:-**

“12.It was not necessary for the High Court to examine the whole evidence threadbare to exercise jurisdiction under Section 482 of the Code. Rather in a case under Section 125 of the Code the trial court is to take a prima facie view of the matter and it is not necessary for the Court to go into the matrimonial disputes between the parties in detail. The section provides maintenance at the rate of Rs 500 per month. There is an outcry that this amount is too small. In the present case,



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however, we are quite surprised that the Court granted a paltry amount of Rs 200 per month as maintenance which was confirmed in the revision by the Sessions Court and the High Court thought it fit to interfere under Section 482 of the Code in exercise of its inherent jurisdiction.”

12. Accordingly, the impugned order passed by the learned Family Court, Sivagangai, in M.C.No.18 of 2022 dated 28.10.2022, is hereby confirmed and the Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petitions are closed.

22.11.2023

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

To

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



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K.K.RAMAKRISHNAN, J.

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