



C.R.P.No.916 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 18..09..2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.916 of 2024

and

C.M.P.No.4571 of 2024

Nasrin Fathima

..... Petitioner

-Versus-

1.Thameem Ansari

2.Sabiya Bee

3.Shabana Parvin

4.Shayina Parvin

5.Yusufdeen

6.Almas Mohamed

..... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the order passed in Cr.M.P.No.6657 of 2023 in D.V.C.No.92 of 2021 on the file of the learned Judicial Magistrate-III, Puducherry, and direct the 1st respondent herein to pay the petitioner a sum of Rs.1,50,000/- as interim maintenance to the petitioner and her two minor children per month.

For Petitioner : Ms.N.Nasreen Fathima

*For Respondent(s) : Mr.D.Nanthagopal for RR1 to 4
and 6*

No representation for R5



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C.R.P.No.916 of 2024

ORDER

This civil revision petition arises against an order dated 19.01.2024 made in Cr.M.P.No.6657 of 2023 in D.V.C.No.92 of 2021 on the file of the learned Judicial Magistrate-III, Puducherry.

2. The civil revision petitioner is the wife. She married the 1st respondent when he was working in Dubai. From the wedlock, a male child was born on 16.11.2013 and a female child was born on 30.10.2020. Thereafter, due to disputes and differences, the parties have separated. The 1st child is studying at Amalorpavam Higher Secondary School in Puducherry and the 2nd child is said to be studying lower kindergarten in the same educational institution.

3. The petitioner pleaded that on account of the domestic violence meted out on her by the respondents 1 to 5, she was constrained to present D.V.C.No.92 of 2021. I am not concerned with the merits of the allegations in the DVC proceedings at this stage.

4. The petitioner took out an application under Section 20 of the Protection of Women from Domestic Violence Act, 2005 seeking maintenance of Rs.1,50,000/- per month. This was based on the fact that the 1st respondent



C.R.P.No.916 of 2024

was working as an Electrical Engineer with AL FURSAN CONTRACTING L.L.C. in the United Arab Emirates. The petitioner pleaded that the salary of her husband, the 1st respondent herein, was 12000 AED per month, which roughly converts to an Indian rupee of Rs. 2,75,000/-. She further pleaded that she is unemployed and has to bear the educational expenses of her children, and hence, she sought the aforesaid amount as maintenance.

5. The 1st respondent entered appearance and filed a detailed counter.

6. According to the 1st respondent/husband, due to the matrimonial rift that arose between the parties at the time of the COVID-19 pandemic, the petitioner returned to India. He would plead that he is currently unemployed on account of the fact that the Judicial Magistrate in a criminal proceeding initiated by the wife, has retained his passport and he is unable to travel to the Middle Eastern country to resume his employment.

7. The learned trial Judge after considering the affidavit and the counter filed by the respective parties, came to a conclusion that a sum of Rs.5,000/- per head would be a justifiable amount towards maintenance. Aggrieved by the same, the present revision.



C.R.P.No.916 of 2024

8. Notice was ordered in this revision on 14.03.2024. Mr.R.Rajaraman entered appearance for the respondents 1 to 4 & 6.

9. Heard Ms.N.Nasreen Fathima for civil revision petitioner and Mr.D.Nanthagopal on behalf of Mr.R.Rajaraman for the respondents 1 to 4 and 6.

10. Ms.N.Nasreen Fathima would contend that on account of his employment in Dubai from 2015 to 2021, the 1st respondent/husband was generating a decent income of 12000 AED per month. She would state that the civil revision petitioner/wife is unable to maintain herself and is finding it extremely difficult to bear the educational fees for the children. Both the children are said to be studying in a school of high standing in Puducherry. She would plead that the respondent/husband is duty bound to pay maintenance.

11. Mr.N.Nanthagopal placing reliance upon the judgement of the Delhi High Court in the case of *Sanjay Bhardwaj and others v. The State and another* [Crl.M.C.No.491 of 2009 dated 27.08.2010], in which it was held that where the husband is unemployed on account of the fact that his passport has been seized by the police, the court should not impose upon him with maintenance at a high level. He would plead that the claim of Rs.1,50,000/-



C.R.P.No.916 of 2024

towards maintenance is fanciful and does not deserve a moment's consideration.

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12. In addition, Mr.N.Nanthagopal would point out that the 1st respondent/husband is currently unemployed and he is living off the benefits that were doled out by his parents, and hence, it is very difficult for him to pay a sum of Rs.1,50,000/- per month towards maintenance. He would plead that the order of the trial judge is correct and does not require any interference.

13. I have carefully considered the submissions made on either side.

14. The principle of the law governing interim maintenance has been settled by the very Delhi High Court, on which Mr.Nanthagopal relied in **Bharat Hegde vs. Saroj Hegde [2007 SCC OnLine Del 622 : AIR 2007 DELHI 197]** wherein the Delhi High Court has held that the amount of maintenance that should be paid by the husband towards his wife and children should be commensurate with the societal status that are occupied by both the husband and wife, and that the court should take into consideration the amount that the husband would have spent on his wife and children, had they continued to live in the matrimonial home.

15. Keeping the above said principle in mind, let me now approach the



C.R.P.No.916 of 2024

facts of the present.

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16. It is not in dispute that the 1st respondent husband is highly educated and a qualified Electrical Engineer. The wife has shown that her husband had secured employment abroad as early as 2015. From the records produced before the court, it is clear that he had even settled an immovable property in favour of his sister that had come into his hands after the dispute had arisen between himself and his wife. In addition, the medical records produced by the civil revision petitioner/wife, substantiate her plea that the female child who was born in 2020 is suffering from medical issues. Apart from that, the male child is also being given education and extracurricular activities as in Karate in a reputed institution. The parties are residents of Puducherry which is nearly akin to a Metropolitan city. There is no dispute that the 1st respondent was receiving 12,000 AED per month as salary. Had the civil revision petitioner and her children been living in the matrimonial home, the 1st respondent/ husband would have certainly spent more than a sum of Rs.5,000/- per month for each of them. The view taken by the Delhi High Court in Sanjay Bharadwaj case (cited supra), does not come to the rescue of the 1st respondent for the simple reason that judgement in that case was pronounced before the judgement in **Rajnesh v. Neha** [(2021) 2 SCC 324]. In the said judgement, the Supreme Court has held



C.R.P.No.916 of 2024

that it is the sacrosanct duty of the husband to maintain his wife and children.

There is no dispute that the respondent is paying a sum of Rs.15,000/- per month towards maintenance without any issues. I feel that the amount of Rs.15,000/- per month, which I have already pointed out, converts to Rs.5,000/- per head, which is hardly sufficient for a family which is residing in a city like Puducherry.

17. Taking into consideration the fact that the 1st respondent/husband had alienated the property that was vested in him in favour of his near relatives after the dispute had arisen and also the fact that over a period of four years from 2015, the 1st respondent had been working in Dubai and was drawing a handsome salary, I am of the view that if the maintenance is enhanced from Rs.15,000/- per month to Rs.30,000/- per month, i.e., Rs.10,000/- per month each to the civil revision petitioner and her two children, it would be in fitness of things.

In fine, the civil revision petition is allowed. Though the prayer is to set aside the order of the learned Judicial Magistrate-III, Puducherry, in its entirety, I am not inclined to set aside the order dated 19.01.2024 passed by the learned Judicial Magistrate-III, Puducherry made in CrI.M.P.No.6657 of 2023 in



C.R.P.No.916 of 2024

D.V.C.No.92 of 2021 as I do not find any reason to set aside the same. The

reasoning given by the learned Judicial Magistrate does not require any revision at the hands of this court. However, the order of the learned Judicial Magistrate-III, Puducherry, shall be modified. Instead of paying a sum of Rs.15,000/- per month to the civil revision petitioner/wife and her children towards interim maintenance, the 1st respondent/husband shall pay a sum of Rs.30,000/- per month. The arrears on account of the enhancement of maintenance shall be paid within a period of eight weeks from the date of receipt of a copy of this order. The liability of the 1st respondent/husband to pay a sum of Rs.30,000/- per month towards interim maintenance shall continue until the disposal of the proceedings. In case, the 1st respondent/husband does not pay the interim maintenance as directed by this court, the learned Judicial Magistrate-III, Puducherry, is at liberty to strike off the defence of the 1st respondent/husband. No costs. Consequently, connected CMP stands closed.

Index : yes / no
Neutral Citation : yes / no
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18..09..2024



C.R.P.No.916 of 2024

To

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1.The Judicial Magistrate-III, Puducherry, Union Territory of Puducherry.



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C.R.P.No.916 of 2024

V.LAKSHMINARAYANAN.J.,

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C.R.P.No.916 of 2024

18..09..2024