



C.R.P.(PD).No. 3419 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2024

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THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No. 3419 of 2024

&

C.M.P. No. 18505 of 2024

C.Rajagopal

...Petitioner

Vs.

Sujithra

...Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order passed in I.A.No.1 of 2019 in O.P.No.2604 of 2016 on the file of the VII Additional Principal Family Court, Chennai, dated 23.02.2024.

For Petitioner : Mr. Charles S Kamalesh M. Appaji

For Respondent : M/s.Kavitha Deenadayalan.



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ORDER

This Civil Revision Petition arises against the order of the VII Additional Principal Family Court, Chennai in I.A.No.1 of 2019 in O.P.No.2604 of 2016, dated 23.02.2024.

2. O.P.No.2604 of 2016 is a petition which was filed by the wife seeking restitution of conjugal rights. The husband has taken out an application in H.M.O.P.No.79 of 2015 on the file of the Sub Court, Kuzhithurai. It is his plea that his wife was already pregnant at the time of marriage. Hence, he moved a petition invoking Section 13 (1) (i - a) and 12 (1) (d) of the Hindu Marriage Act. This petition was subsequently transferred to the file of the Family Court, Chennai, by orders of this Court and renumbered as O.P.No.1363 of 2018.

3. The wife pleading that she was unable to maintain herself took out an application under Section 24 of the Act. She claimed a sum of Rs.1,50,000/- per month as maintenance and Rs.1,00,000/- towards



litigation expenses.

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4. Before the learned Judge, the husband did not let in any evidence nor did he file his affidavit of assets and liabilities as directed by the Supreme Court in ***Rajnish vs Neha and another - AIR 2021 (SC) 569***. On the contrary, he took out a plea that the child does not belong to him but is a result of a previous marriage of the respondent / wife. The learned Trial Judge has considered all the facts and law that is applicable and granted maintenance of Rs.12,000/- and Rs.15,000/- towards litigation expenses, against which the present civil revision petition.

5. Heard Mr.Charles S Kamalesh M. Appaji and M/s.Kavitha Deenadayalan, for the respondent.

6. It is not in dispute that the petitioner married the respondent on 03.09.2012 at Kurumbetti Bhagavathi Amman Temple, Marthandam, Kanyakumari District. It is the case of the petitioner that a male child



was born within a period of 7 months and 28 days of the marriage and that this child was not born to him.

7. In order to substantiate this case, he took out an application in I.A.No.2 of 2022, seeking to compare the DNA of the petitioner, the child and the respondent. The DNA test report was sent to the Court on 09.06.2023. The civil revision petitioner objected to the said report stating that the Advocate Commissioner had unauthorisedly opened the seal. Therefore, the Court suo motu asked for a soft copy of the report to be sent to its official e-mail ID. An e-mail was sent on 12.02.2024 and a hard copy was also served on 21.02.2024. The learned presiding officer opened the DNA report sent by the Central Forensic Science Laboratory, Hyderabad, and found from the report that the child that was born is that of the petitioner.

8. The learned Judge in the impugned order found that the affidavit of assets and liabilities, bank statements and income tax receipts of the petitioner had not been filed. Therefore, applying the



rule of thumb, he came to the conclusion that a sum of Rs.12,000/- per month is ideal in the interest of justice.

9. Mr.Charles S Kamalesh M. Appaji would submit that he is going to challenge the DNA report.

10. It is always open to the party to challenge the report by invoking the provisions of Section 45 of the Indian Evidence Act. However, prima facie there is a report which stares against the husband. As pointed out by the Supreme Court in ***Rajnesh vs Neha and another - AIR 2021 (SC) 569***, it is the sacrosanct duty of the husband to maintain the wife.

11. The husband having failed to produce any records before the Court to show that he is not earning an income, the Court was left with no other alternative but to proceed on the basis of the available evidence and pleadings of the parties. The wife pleads that she is unable to maintain herself. A sum of Rs.12,000/- per month granted by



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the Trial Judge is neither excessive nor arbitrary. I find no reason to interfere with the order.

12. At this stage, Mr.Charles S Kamalesh M. Appaji would submit that the husband is not in a position to pay the arrears immediately. Taking into consideration the plea of Mr.Charles S Kamalesh M. Appaji, 12 weeks time is granted to the husband to clear the arrears. In default, it is open to the Trial Judge to take appropriate measures including striking off the petition initiated by the husband for divorce. The liability to pay maintenance, month on month, would continue.

13. With the above observation, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

The VII Additional Principal Family Court,
Chennai.



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V.LAKSHMINARAYANAN, J.

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