



Crl.RC.No.1491 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.04.2024

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

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and

Crl.MP.No.13193 of 2023

B.Selvaraj

...Petitioner

Vs.

1. Vijayalakshmi

2. Minor Srikanth

(Minor represented by Next friend/Guardian mother
1st petitioner, Vijayalakshmi)

...Respondents

Petition filed under Section 397 r/w 401 of Code of Criminal Procedure to set aside the order in M.C.No.01/2022 dated 26.04.2023 passed by the learned Family Court Judge at Dharmapuri.

For Petitioner : Ms.J.Kamalini

For Respondents : No Appearance



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ORDER

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This Criminal Revision case has been filed to set aside the order dated 26.04.2023 made in M.C.No.01/2022 on the file of the Family Court Judge, Dharmapuri. The learned Judge has ordered maintenance of Rs.6,000/- per month and Rs.25,000/- per annum to the 1st respondent/wife.

2. The case of the petitioner is that, the marriage between the petitioner and the 1st respondent was solemnized in the year 2009 as per the Hindu Rites and Customs. Previously, the 1st respondent was married to one Karnan and out of the wedlock, they were blessed with a girl child. After the demise of the said Karnan, the 1st respondent was married to the petitioner herein and the 2nd respondent was born in the year 2010. Thereafter, due to some matrimonial dispute, the 1st respondent left her matrimonial home. While so, alleging that the petitioner failed to take care of them, the respondents, the respondents filed a maintenance case under Section 125 of Cr.P.C. in MC.No.01 of 2022 on the file of the Family Judge, Dharmapuri, claiming a monthly maintenance amount of Rs.50,000/- each to the respondents. After adjudication, the trial Court, vide order dated



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26.04.2023, awarded a monthly maintenance of Rs.6,000/- and Rs.25,000/- per annum in favour of the 1st respondent/wife. Aggrieved with the same, the petitioner/husband has come up with the present revision.

3. Learned counsel for the petitioner submitted that, out of love and affection the petitioner bought a Scooty for his wife/respondent, however, the respondent affixed the name of one Tirupathi, who is a close relative of the respondent with whom she was leading an adulterous life. Further, though the 2nd respondent was with the 1st respondent at the time of separation, however, upon coming to know about the adultery committed by his mother/the 1st respondent, the 2nd respondent left the house and rejoined with the petitioner and the 2nd respondent is under the care and custody of the petitioner. He further submitted that, the petitioner is a carpenter by profession and is earning a monthly income of Rs.10,000/- alone using which he has to take care of himself and his child. Further, the 1st respondent is running a tailoring business and earning a sum of Rs.20,000/- per month and is capable of maintaining herself. While such being the case, directing the petitioner to pay 60% of his monthly income as monthly



maintenance in favour of the 1st respondent is wholly unsustainable.

Accordingly, he prayed for appropriate orders.

4. Though notice was served and the names of the respondents are printed in the cause list, none appeared on their behalf. However, considering the period of pendency of this revision, this Court is inclined to dispose of this case based on the material documents available on record.

5. There is no dispute about the marriage between the petitioner and the 1st respondent. The 1st respondent is the wife and out of their wedlock, they were blessed with the 2nd respondent herein. It is to be pointed out that it is the duty of the husband to maintain his wife and child and the comforts, which were available to the spouse and child should not be lost due to the friction between the warring parties. Only to that end, Section 125 Cr.P.C. was brought into the statute. In such a backdrop, it becomes the duty of the husband to maintain his wife and child.

6. It is equally not in dispute that, the respondents filed a maintenance case in MC.No.01 of 2022, claiming a monthly maintenance



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amount of Rs.50,000/- each and the trial Court, vide impugned order awarded a monthly maintenance of Rs.6,000/- and Rs.25,000/- per annum in favour of the 1st respondent alone and refused to order for maintenance in favour of the 2nd respondent, since he is under the care and custody of the petitioner.

7. Though it is the claim of the petitioner that, the 1st respondent was leading an adulterous life with one of her close relative namely Tirupathi, mere affixing the name of the relative in the two wheeler will not be a solid proof to establish the alleged adultery committed by the 1st respondent. Further, when such a serious allegation was made by the petitioner as against the 1st respondent, it is the duty cast upon the petitioner to substantiate the same. However, in the present case, no such documentary evidence was produced by the petitioner either before this Court or before the trial court to show that the 1st respondent committed adultery and without any basis and without any proof, making an allegation of adultery is wholly unacceptable and the petitioner miserably failed to substantiate his claim.



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8. A careful perusal of the order passed by the court below reveals that the court below has taken into consideration the documentary evidence as also the deposition of the witnesses examined by the parties and had come to the conclusion that only to deny the benefit of maintenance to the 1st respondent, certain acts have been perpetrated by the revision petitioner. When the basis of such a finding is the deposition of the 1st respondent, which has been rightly appreciated by the court below while awarding maintenance, the same does not warrant any interference.

9. Further, it has to be pointed out that it is the duty of the husband to maintain his wife and the revision petitioner herein is duty bound to maintain his wife and child and rightly appreciating the above, maintenance has been awarded by considering the means of the revision petitioner. The maintenance awarded is just and reasonable and the same does not require any interference.



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WEB COPY 10. For the reasons aforesaid, this Criminal Revision Case stands dismissed. Consequently, the connected miscellaneous petition is closed.

15.04.2024

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To

The Family Court,
Dharmapuri.



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M.DHANDAPANI, J.

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