



C.R.P.No.4036 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03..10..2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.4036 of 2024

and

C.M.P.No.22183 of 2024

Balamurali @ Esakkimuthu

..... Petitioner

-Versus-

N.Saroja Devi

..... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 23.03.2020 made in I.A. No.01 of 2020 in O.P. No.3052 of 2019 on the file of the V Additional Family Court, Chennai.

For Petitioner : Mr.P.Rajkumar Pandian

For Respondent : Ms.L.Karthiga

ORDER

This civil revision petition arises against an order passed by the learned V Additional Principal Judge, V Additional Family Court, Chennai in I.A.No.1 of 2020 in O.P.No.3052 of 2019 dated 23.03.2020.



C.R.P.No.4036 of 2024

2. There is no dispute in the relationship between the petitioner and the respondent. The petitioner is the husband, and the respondent is the wife. The petitioner/husband initiated O.P.No.3052 of 2019 seeking divorce against the respondent/wife. He alleged that the petitioner/wife is having an illicit intimacy with a third party, and therefore, he is entitled to a decree.

3. The respondent/wife entered appearance and took out an application for interim maintenance under Section 24 of the Hindu Marriage Act, 1955. She pleaded that the respondent/husband is working in Integral Coach Factory at Chennai and is drawing a sum of Rs. 57,000/- per month. Therefore, she sought an interim maintenance of Rs. 25,000/- per month. She pleaded that she has no source of income.

4. The respondent/husband filed a counter affidavit in the said application pleading that it was the respondent/wife who left the matrimonial home at her own accord, leaving behind the child. He reiterated his contention that the petitioner is living in adultery with one Muthukumar. He would deny that he is drawing a sum of Rs. 57,000/- per month as salary. His case is that he is drawing only a sum of Rs. 52,235/- per month, and after deduction and contribution, he is receiving a sum of Rs. 36,573/- per month. He added that for



C.R.P.No.4036 of 2024

every visit of the respondent/wife to come to Chennai, he is paying a sum of

Rs. 2,000/- towards travel and accommodation expenses.

5. The learned Judge after considering the plea of both parties, came to the conclusion that a sum of Rs. 10,000 per month towards interim maintenance would be reasonable. The learned Judge came to this conclusion based on the Ex.R1-Salary Certificate issued by the Integral Coach Factory, Chennai, to the civil revision petitioner/husband.

6. Aggrieved by the same, the petitioner/husband preferred an appeal in C.M.A.No.1487 of 2021 before this court. On 27.03.2024, a Division Bench of this Court held that as the position of law had changed on account of the judgment in **S. Menaka v. K.S.K. Nepolian Socraties** [C.M.P. No.18729 of 2023 in C.M.A.No.1914 of 2021 dated 21.03.2024], the appeal was dismissed as not maintainable with liberty to the petitioner to prefer a revision. Hence, this revision.

7. I heard Mr.P.Rajkumar Pandian for the civil revision petitioner.

8. Mr.P.Rajkumar Pandian would contend that as the respondent/wife is living in adultery, she is not entitled to interim maintenance. He would further



C.R.P.No.4036 of 2024

state that the respondent/wife has subsequently secured employment as sub-staff in M/s. Quality Property Management Services Private Limited and is earning a monthly salary of Rs.10,610/- and therefore, in the light of the changed circumstances, the court should remand the matter for fresh disposal.

9. I have carefully gone through the records and considered the submissions of Mr.P.Rajkumar Pandian.

10. There is a stark distinction between the maintenance ordered by a Magistrate under Section 125 of the Code of Criminal Procedure, 1973 (for short, “the Code”) and that of the interim maintenance ordered by a court dealing with matrimonial proceedings under Section 24 of the Hindu Marriage Act, 1955. Under Section 125(4) of the Code, if a court has ordered maintenance or, during the course of inquiry, it is proved that the wife is living in adultery, then, the Code empowers the Magistrate dealing with the maintenance proceedings to deny the maintenance to the wife. In a stark distinction under Section 24 of the Hindu Marriage Act, 1955, all that the wife would have to prove before the court is that she is not in a position to maintain herself on account of the separation between the parties, and in those circumstances, she can make a claim on the husband to maintain her.



C.R.P.No.4036 of 2024

11. The Parliament, which enacted both the Code of Criminal Procedure, 1973 and the Hindu Marriage Act, 1955, while including the term “**living in adultery**” as a disqualification for maintenance under Section 125 of the Cr.P.C., did not include such a disqualification under Section 24 of the Hindu Marriage Act, 1955. If I were to accept the plea of Mr.P.Rajkumar Pandian, I would be judicially amending Section 24 of the Hindu Marriage Act and holding that the bar of living in adultery operates even for an application under Section 24 of the Hindu Marriage Act, 1955. I do not possess such powers. The Parliament, in its wisdom, while incorporating a disqualification under Section 125 of the Cr.P.C., had not included the said bar under Section Hindu Marriage Act, 1955.

12. Furthermore, a perusal of Section 25 of the Hindu Marriage Act, 1955, would show that living in adultery could be raised as a ground to deny permanent alimony to the wife. The term “**other circumstances**” found in Section 25 of the Hindu Marriage Act, 1955 is wide enough to include the head “living in adultery” also. The Parliament had amended Section 25 of the Hindu Marriage Act, 1955, in the year 1976, i.e., after it had brought forth the Code of Criminal Procedure, 1973, and yet it did not amend or include a disqualification under Section 24 of the Hindu Marriage Act, 1955, to that



C.R.P.No.4036 of 2024

effect. This shows that the Parliament was careful in not incorporating any bar

under Section 24 of the Hindu Marriage Act, 1955.

13. In the light of the above discussion, I am not in a position to accept the arguments of Mr.P.Rajkumar Pandian that if a wife is living in adultery, she is not entitled to interim maintenance under Section 24 of the Hindu Marriage Act, 1955.

14. The other aspect that has to be considered is that if the plea raised by Mr.P.Rajkumar Pandian is accepted, then all that a husband would have to do in order to defeat the claim under Section 24 of the Hindu Marriage Act, 1955 is to plead that the wife is living in adultery. That would put the weaker sex into an extreme difficulty. Taking a plea of adultery is very easy, but, the proof thereof is extremely difficult. Therefore, I have to conclude that mere fact that the petitioner/husband alleges that the respondent/wife is living in adultery with a third party does not mean that the court is denuded of the power to order for interim maintenance.

15. Having come to this conclusion on the sheet anchor of the contention of Mr.P.Rajkumar Pandian, now, I turn my attention to the quantum of maintenance fixed by the Family Court.



C.R.P.No.4036 of 2024

16. It is not in dispute that the petitioner/husband is having a gross salary of Rs.52,235/- per month and his net salary is Rs.36,573/-. He is residing in the quarters that has been provided by the Integral Coach Factory. Therefore, he has in his hands a sum of Rs. 36,573/- to be parted with towards maintenance that can be ordered by the court. Unless and until the amount of maintenance fixed by the Family Court is either excessive or arbitrary, this court, being a revision court, cannot interfere with the said order. A sum of Rs. 10,000 per month, which is less than one-third of the salary of the petitioner/husband, which converts to Rs. 300 per day cannot be said to be excessive or arbitrary.

17. In the light of the above discussion, I do not find any reason to interfere with the order of the learned V Additional Principal Judge made in I.A. No.01 of 2020 in O.P. No.3052 of 2019 dated 23.03.2020.

In the result, the civil revision petition is dismissed. No costs. Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no
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To
1.The V Additional Principal Judge, V Additional Family Court, Chennai.



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C.R.P.No.4036 of 2024

V.LAKSHMINARAYANAN.J.,

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C.R.P.No.4036 of 2024

03..10..2024