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C.R.P.No.4171 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17..10..2024

Coram

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.4171 of 2024

and

C.M.P.No.22991 of 2024

Abdul Karim

..... Petitioner

-Versus-

1.Mrs.Noorul Ain

2.Miss. Hemaira

..... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the order in Criminal Appeal No.20 of 2022 on the file of the learned Principal sessions Judge, Nagapattinam, Order dated 08.03.2023 by confirming the order passed by the order passed by the learned Judicial Magistrate, Additional Mahila Court, Nagapattinam, dated 01.08.2022 in CrI.M.P.No.747 of 2022 in D.V.C.No.1 of 2022.

*For Petitioner : Mr.T.R.Sathiamohan
for Mr.Vandhiyathevan Veera
for M/s.SVV Law Firm*



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ORDER

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This civil revision petition arises against the order of the learned Principal Sessions Judge, Nagapattinam, in Crl.A.No.20 of 2022 dated 08.03.2023 by confirming the order of the learned Judicial Magistrate, Additional Mahila Court, Nagapattinam, in Crl.M.P.No.747 of 2022 in D.V.C.No. 1 of 2022 dated 01.08.2022.

2.0 The civil revision petitioner is the husband of the 1st respondent-Noorul Ain and the father of the 2nd respondent-Hemaira. There is no dispute in the relationship between the parties. The civil revision petitioner married the 1st respondent on 24.09.2000. From the wedlock, two children were born. The son is now aged about 21 years and the daughter, the 2nd respondent, is aged 13 years.

2.1 The civil revision petitioner, though an Indian citizen, was working in Saudi Arabia, and now he is working in Qatar. Alleging certain unpalatable incidents, the wife and her daughter have initiated D.V.C.No.1 of 2022. The pleadings are complete with the husband having filed a detailed counter. Thereafter, the wife took out an application in Crl.M.P.No.747 of 2022 seeking



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maintenance under Section 23(1) r/w 28(1) of the Protection of Women from Domestic Violence Act, 2005 (Central Act 43 of 2005). She sought a sum of Rs. 20,000 per month as interim maintenance.

2.2 The civil revision petitioner/husband filed a detailed counter. According to him, the property in which the wife is residing, was taken on “othi” by him from one Mrs.Samsul Hooda, after paying a sum of Rs.5,00,000/- (Rupees Five Lakhs only). He added that the 1st respondent/wife was permitted to withdraw amounts from his ICICI Bank and Canara Bank accounts whenever he was abroad. The sheet anchor of his case is that he had sent monies from Saudi Arabia to the 1st respondent, and the 1st respondent had purchased three properties in her name. He alleged that on account of the fact that the civil revision petitioner filed a suit in O.S.No.44 of 2021 on the file of the District Judge, Nagapattinam, seeking a declaration of his title to the properties, the 1st respondent/wife has presented the present domestic violence complaint. He adds that the wife had sold the property situated at Siva Sakthi Nagar to one B.Mangaiyarkarasi for a considerable sum and had pocketed the same, and she is enjoying the benefits of the said amount. Hence, she is not entitled to maintenance.



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2.3 The learned Magistrate on considering the petition and counter came to the conclusion that the wife and daughter of the civil revision petitioner are entitled to maintenance at the rate of Rs.5,000/- each per month and allowed the maintenance application on 01.08.2022.

2.4 Aggrieved by the same, invoking Section 29 of the Protection of Women from Domestic Violence Act, 2005, the husband preferred an appeal before the learned Sessions Judge, Nagapattinam. The said Criminal Appeal was received as Crl.A.No.20 of 2022. After hearing both sides, the appeal was dismissed on 08.03.2023. Hence, this civil revision petition.

3. Heard Mr.T.R. Sathiamohan for Mr.Vandhiyathevan Veera for the civil revision petitioner/husband.

4.0 Mr.T.R.Sathiamohan submits

(i) the properties that had been purchased by the wife were out of the income that had been generated by the civil revision petitioner/husband in Saudi;

(ii) the wife is residing in a house that had been taken on “othi” by the civil revision petitioner/husband by paying a sum of Rs.5,00,000/-; and



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(iii) the wife had sold the properties purchased in her name out of the income that had been generated by the husband and is in possession of Rs.14,00,000/-.

4.1 He points out that none of these aspects had been considered by the learned Judicial Magistrate, Additional Mahila Court, Nagapattinam or by the learned Sessions Judge, Nagapattinam and hence, the order of interim maintenance require to be revised.

5. I have considered the submissions made by Mr.T.R.Sathiamohan and also gone through the records carefully.

6. The pleas that have been raised by Mr. T.R. Sathiamohan are matters which have to be necessarily gone into at the time of trial. It is not in dispute that the properties have been purchased in the name of the 1st respondent/wife. The claim of the civil revision petitioner/husband that he is the owner of the properties and as they were purchased from and out of his income. This is the subject matter of dispute in O.S.No.44 of 2021 pending on the file of the learned Principal District Judge, Nagapattinam. If the 1st respondent/wife has to await till the disposal of the civil proceedings in order to claim maintenance,



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then decades would pass before she is entitled to make such a claim.

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7. *Prima facie*, where the property stands in the name of a person, he/she is deemed to be the owner of the same, unless and until the same is held to be contrary to law by a decree by civil court. As on today, the properties stand in the name of the 1st respondent/wife, and therefore, she has to be treated as the owner of those properties.

8. The purpose of granting maintenance to the wife is in order to enable her to maintain a decent living pending disposal of the litigation that she is facing at the instance of the husband. The fact that the civil revision petitioner/husband has provided her with a residence only prevents the court from passing a residence order as required under Section 19 of the Protection of Women from Domestic Violence Act, 2005. By providing a roof over the head of the wife and a daughter, the husband is not exonerated from paying maintenance to his wife and daughter.

9. It has been held in **Rajnesh v. Neha [(2021) 2 SCC 324]** that it is the sacrosanct duty of the husband to maintain his wife and, as the father, to maintain his children as well. The wife has not been in a position to establish that the husband is making Rs.30,000/- per month. However, from the



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pleadings of parties, it is clear that the husband has been working abroad. In fact, the civil revision petitioner, in his counter to the domestic violence proceedings, has pleaded that he had considerable wealth at his disposal in the form of jewels, gold coins, and securities.

10. At the time of fixation of maintenance, the court takes into consideration the societal status and stature of the parties. If the husband and wife had been living together, I am sure that the civil revision would have spent more than a sum of Rs.5,000/- on the wife and a sum of Rs.5,000/- on the daughter.

11. All these necessary aspects as regards fixation of maintenance had been carefully considered by the courts below. Apart from that, unless and until the maintenance amount ordered is arbitrary or shockingly disproportionate, the scope of revision under Article 227 of the Constitution of India is limited. As I do not find either of the vices in the order under revision, I am not inclined to admit this civil revision petition.

In the result, the civil revision petition is dismissed. No costs.



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Consequently, connected CMP is closed.

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Index : yes / no

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Neutral Citation : yes / no

Speaking / Non Speaking Order

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To

1.The Principal Sessions Judge, Nagapattinam, Nagapattinam District.

2.The Judicial Magistrate, Additional Mahila Court, Nagapattinam,
Nagapattinam District.



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V.LAKSHMINARAYANAN.J.,

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