



Crl.R.C.(MD)No.389 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2024

CORAM

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C.(MD)No.389 of 2024

and

Crl.M.P.(MD)No.4302 of 2024

R.Manikandan

... Petitioner

Vs.

1.Punitha

2.Sakthikeerthana

... Respondents

PRAYER : Criminal Revision Case is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order dated 13.10.2023 made in M.C.No.14 of 2022 passed by the Family Court, Theni and allow the above criminal revision case.

For Petitioner : Mr.K.P.Ramesh

For Respondents : Mr.M.Kaliraj

ORDER

This criminal revision case has been filed to set aside the order dated 13.10.2023 passed in M.C.No.14 of 2022 on the file of the Family Court, Theni.



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2.The petitioner, who is the husband of the first respondent, has filed this revision challenging the order passed by the Family Court, Theni in M.C.No.14 of 2022, which was filed under Section 125 Cr.P.C., to pay maintenance.

3.Marriage between the first respondent and the petitioner took place on 26.02.1999. Thereafter, the second respondent was born on 07.11.2001. Subsequently, due to matrimonial dispute, divorce petition had been filed by the petitioner in HMOP.No.19 of 2003 and divorce was also granted and thereafter, the petitioner entered into second marriage. Thereafter, the first respondent filed a petition in M.C.No.2 of 2019 seeking maintenance. During pendency of the said petition, the petitioner undertook to pay amount and also agreed to meet out the expenses for the studies of the second respondent herein. On the basis of the undertaking given by the petitioner, the said maintenance petition was not prosecuted by the respondents herein. That being the position, the petitioner has not chosen to abide by his words as per the compromise entered into between the parties in M.C.No.2 of 2019. Therefore, the respondents filed



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maintenance petition in M.C.No.14 of 2022 claiming maintenance of Rs. 30,000/- per month and Rs.10,000/- as cost of litigation

4.To prove the maintenance claim, the first respondent examined herself as P.W.1 and marked Ex.P.1 to Ex.P.4. The petitioner examined himself as R.W.1 and marked Ex.R1 to Ex.R5. The learned trial Judge, after considering the oral and documentary evidence, awarded a sum of Rs.10,000/- each to the respondents by passing the impugned order. Challenging the same, the petitioner has preferred the present revision.

5.The learned counsel appearing for the petitioner submitted that the first respondent filed a divorce petition in HMOP.No.19 of 2003 and divorce was also granted on 11.07.2003. After a lapse of many years, maintenance petition under Section 125 Cr.P.C., is not maintainable. He further submitted that the first respondent was earning sufficient income through her job in the Postal Department. To ascertain the correct income, he applied through RTI Act and the same was returned by the authority of the Postal Department. Hence, she is not entitled to get the maintenance and the same was not considered by the learned trial Judge.



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He also submitted that the petitioner is continuously paying amount to meet out the educational expenses of the second respondent. Now, the second respondent has also completed her studies and she is also earning and hence, she is also not entitled for the maintenance.

6.Per contra, the learned counsel appearing for the respondents submitted that after granting of divorce, the first respondent filed maintenance petition in M.C.No.2 of 2019 and the same was not prosecuted, after entering into compromise. However, the petitioner has not chosen to abide by his words and hence, the first respondent filed petition for maintenance in M.C.No.14 of 2022. The first respondent is earning only Rs.5,000/-. The case of the husband that the daughter, after completing degree, is working in IT Company is not correct. Till date she is unemployed.

7.This Court heard the rival submissions made on either side and perused the materials available in the record.



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8. The learned counsel for the petitioner/husband submitted that the daughter/second respondent herein, after completing the decree is working in the IT Company and to substantiate the same, he has not produced any materials. Therefore, this Court accepts the evidence of the first respondent that her daughter is unemployed. Therefore, the petitioner is liable to pay maintenance to the second respondent till her marriage. The same has been fortified by the Hon'ble Supreme Court in the following cases:

8.1.In the case of ***Jagdish Jugtawat v. Manju Lata***, reported in ***(2002) 5 SCC 422*** at page 422

4... it is manifest that the right of a minor girl for maintenance from parents after attaining majority till her marriage is recognized in Section 20(3) of the Hindu Adoptions and Maintenance Act. Therefore, no exception can be taken to the judgment/order passed by the learned Single Judge for maintaining the order passed by the Family Court which is based on a combined reading of Section 125 CrPC and Section 20(3) of the Hindu Adoptions and Maintenance Act.



8.2. In the case of *Abhilasha v. Parkash*, reported in (2021) 13

SCC 99 at page 118

32.The provision of Section 20 of the 1956 Act casts clear statutory obligation on a Hindu to maintain his unmarried daughter who is unable to maintain herself. The right of unmarried daughter under Section 20 to claim maintenance from her father when she is unable to maintain herself is absolute and the right given to unmarried daughter under Section 20 is rightly granted under Personal law, which can very well be enforced by her against her father. The judgment of this Court in Jagdish Jugtawat [Jagdish Jugtawat v. Manju Lata, (2002) 5 SCC 422 : 2002 SCC (Cri) 1147] laid down that Section 20(3) of the 1956 Act recognised the right of a minor girl to claim maintenance after she attains majority till her marriage from her father. Unmarried daughter is clearly entitled for maintenance from her father till she is married even though she has become major, which is a statutory right recognised by Section 20(3) and can be enforced by unmarried daughter in accordance with law.

9.Further, the petitioner admitted the relationship between him and respondents. It is also admitted that divorce was obtained by the petitioner in HMOP.No.19 of 2003 on 11.07.2003. This Court



considered the submission made by the learned counsel for the petitioner that the divorce was granted on the ground cruelty and hence, the respondents are not entitled for the maintenance. The said submission is against the Law as laid down by the Honourable Supreme Court in the case of **Swapan Kumar Banerjee v. State of W.B.**, reported in (2020) 19 **SCC 342**. The first respondent has not remarried. As per Section 125 of Cr.P.C., wife includes divorcee and she is entitled to claim maintenance till her remarriage. The Hon'ble Supreme Court discussed the same in detail in the above judgment and has held that even if divorce was granted on the ground of desertion, there is no bar to claim the monthly maintenance. The relevant paragraph of the judgment is as follows:

7. No doubt, as urged by Mr Debal Banerjee, Explanation II to Section 125 CrPC by deeming fiction includes a divorced woman to be a wife and, therefore, a woman who has been divorced by her husband can still claim maintenance under Section 125 CrPC. The question is how we should read the provisions of sub-section (4) in this regard, especially when we deal with those women, against whom a decree for divorce has been obtained on the ground that they have deserted their husband. Once the relationship of marriage



comes to an end, the woman obviously is not under any obligation to live with her former husband. The deeming fiction of the divorced wife being treated as a wife can only be read for the limited purpose for grant of maintenance and the deeming fiction cannot be stretched to the illogical extent that the divorced wife is under a compulsion to live with the ex-husband. The husband cannot urge that he can divorce his wife on the ground that she has deserted him and then deny maintenance which should otherwise be payable to her on the ground that even after divorce she is not willing to live with him. Therefore, we find no merit in the contention of Mr Debal Banerjee.

As per the law laid down by the Hon'ble Supreme Court, even after divorce, the wife is entitled for the maintenance till her remarriage.

10.Insofar as quantum is concerned, it is admitted case of the first respondent that she is earning Rs.5,000/- per month. In the said circumstances, considering the same, this Court is inclined to reduce the award amount granted towards first respondent from Rs.10,000/- to Rs.7,500/- from the date of filing of the petition. Insofar as the award amount towards the second respondent is concerned, the petitioner has to



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pay the maintenance amount till her marriage as awarded by the Court below.

11. Accordingly, this criminal revision case is partly-allowed. The maintenance awarded in M.C.No.14 of 2022 on the file of the Family Court, Theni, dated 13.10.2023 is hereby reduced from Rs.10,000/- to Rs.7,500/- in respect of the first respondent/wife alone and the maintenance amount awarded in respect of the second respondent/daughter remains intact. Consequently, connected Criminal Miscellaneous Petition is closed.

13.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
gns/sbn

To

Family Court, Theni



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