



CrI.R.C.(MD)No.422 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2024

CORAM

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

CrI.R.C.(MD)No.422 of 2024

and

CrI.M.P.(MD)No.4537 of 2024

Robert Albin

... Petitioner

Vs.

1.Sebastin Selvarani

2.Minor.Edwina Salet

(R2/Minor represented by first respondent/guardian/mother)

... Respondents

PRAYER : Criminal Revision Case has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and to set aside the order passed in M.C.No.17 of 2021 on the file of the learned Judicial Magistrate, Manaparai dated 11.09.2023.

For Petitioner : Mr.S.Poornachandran

For Respondent : MrP.Kalaiyarasai Bharathi

ORDER



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The petitioner/husband of the first respondent has filed this case against the impugned maintenance award dated 11.09.2023 passed in M.C.No.17 of 2021, by the learned Judicial Magistrate, Manaparai, wherein the Court below directed to pay monthly maintenance of Rs. 12,000/- totally to the respondents ie., his wife and his daughter.

2.The case of the first respondent/wife before the Court below is that the marriage took place on 17.03.2019. In their wedlock, a female child was born on 03.02.2020. Thereafter, due to matrimonial dispute, the petitioner filed divorce petition in I.D.O.P.No.129 of 2020 and the same is pending. Thereafter, the respondents filed a petition for maintenance under Section 125 Cr.P.C., claiming maintenance of Rs. 15,000/- per month.

3.The petitioner/husband filed a counter affidavit denying the allegations made in the maintenance petition. According to him, he is earning only Rs.7,500/-. That apart, he subsequently pleaded that the first respondent is earning sufficient income and in the said circumstances, he



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seeks dismissal of the present revision.

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4.To prove the case of the first respondent, she examined herself as P.W.1 and marked Ex.P.1 to Ex.P.14. The petitioner herein examined himself as R.W.1 and marked Ex.R.1 & Ex.R.2. The learned trial Judge, after considering the oral and documentary evidence, had held that the respondents herein are entitled to get maintenance and awarded a sum of Rs.12,000/- per month totally to the respondents.

5.The learned counsel appearing for the petitioner would submit that the petitioner is earning only a sum of Rs.7,786/- and hence, granting maintenance of Rs.12,000/- totally to the respondents is not in accordance with law. According to the learned counsel appearing for the petitioner, the award amount passed by the Court below is excessive and the same is liable to be interfered.

6.This Court considered the rival submissions made by the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.



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7.The petitioner has raised the following two points:

The respondent has her residence in her own house?

The respondent's father has immovable properties and the income had been utilized by the respondents?

8.The petitioner did not dispute the relationship and his employment. Upon perusal of the documentary evidence adduced before the Court below, the learned trial Judge has awarded a sum of Rs. 12,000/- totally to the respondents as a monthly maintenance. The said amount was determined by the learned trial Judge by considering the cost of living for the present date, the educational expenditure and the social status of the parties. The same was in accordance with the following guidelines issued by the Hon'ble Supreme Court in ***Rajnesh v. Neha***, reported in ***(2021) 2 SCC 324*** laid the following guidelines:

- “1. Status of the parties.*
- 2. Reasonable wants of the claimant.*
- 3. The independent income and property of the claimant.*
- 4. The number of persons, the non-applicant has to maintain.*



5. *The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.*
6. *Non-applicant's liabilities, if any.*
7. *Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.*
8. *Payment capacity of the non-applicant.*
9. *Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.*
10. *The non-applicant to defray the cost of litigation.*
11. *The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act.”*

9.This Court perused the evidence of R.W.1 and also evidence of P.W.1. The respondents proved that the petitioner herein is working as a Professor in a college. Hence, the learned trial Judge has correctly awarded the maintenance and the same is in accordance with law. This Court is not inclined to interfere with the same.

10. As per the above said guidelines, the learned trial Judge correctly considered the economic status and the cost of living etc. The



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awarded amount is a reasonable one. It is the duty of the husband to maintain his wife and he has no right to take shelter under the income of his father-in-law. In the said circumstances, this Court is not inclined to interfere with the quantum of maintenance. The learned counsel for the petitioner further submitted the first respondent has sufficient means to maintain themselves. In this case, the petitioner has not produced any evidence to prove the independent income of the wife and as well as she derived income from the immovable properties of her father. To substantiate the same, no documents and oral evidence was adduced by the petitioner and the same was fortified by the law laid down by the Hon'ble Supreme Court in the case of **Swapan Kumar Banerjee v. State of W.B.**, reported in **(2020) 19 SCC 342**,

10.... No evidence has been led to show what is the income of the wife or where the wife is working. It was for the husband to lead such evidence. In the absence of any such evidence no presumption can be raised that the wife is earning sufficient amount to support herself.



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It is the duty of the husband to prove the income of the wife. There is no legal evidence for the same and hence in this respect also, this Court is not inclined to accept the contention of the petitioner.

11. Accordingly, this Criminal Revision Petition is dismissed and the order passed by the learned Judicial Magistrate, Manaparai, in M.C.No.17 of 2021, dated 11.09.2023, is hereby confirmed. Consequently, connected miscellaneous petition is closed.

13.06.2024

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

To
The Judicial Magistrate, Manaparai



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K.K.RAMAKRISHNAN,J.

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