



Crl.R.C.(MD).No.280 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05.06.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.280 of 2023

and

Crl.M.P.(MD). Nos.17181 and 4062 of 2023

A.Ganesan

... Petitioner

Vs.

1.Selvi

2.Nagaraja

3.Nagajothi

4.Nageswari

... Respondents

*(Respondents 2 to 4 are physically challenged
hence represented by first respondent)*

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for records relating to the order dated 04.01.2023 made in M.C.No.09 of 2021 on the file of the Judicial Magistrate, Uthamapalayam, directing the petitioner to pay a sum of Rs. 20,000/- per month in total and to set aside the same as illegal and allow the above revision petition.



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For Petitioner : Mr.L.Rajiah

For Respondents : No appearance

ORDER

This Criminal Revision Case has been filed to set aside the order dated 04.01.2023 made in M.C.No.09 of 2021, on the file of the Judicial Magistrate, Uthamapalayam.

2.The petitioner married the first respondent on 15.02.1993. Due to the said wed lock, the respondent Nos.2 to 4 were born to them. Among the three children, two of them are special children and they have enduring mental illness. Another child is studying in 12th standard. The petitioner after the birth of three children, driven out the respondent from the matrimonial home and they are living separately. Under the said circumstances, the first respondent filed the petition under Section 125 of Cr.P.C., claiming maintenance of Rs.35,000/- per month to all the respondents in M.C.No.09 of 2021. On 28.02.2018, ex-parte maintenance award was passed and the petitioner filed a petition to set aside the ex-parte order and the same was allowed on 21.11.2020 with a condition to



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deposit a sum of Rs.50,000/-.

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The petitioner herein filed a counter admitting the relationship and he pleaded that he separated from the company of the first respondent long back and living separately for the past 10 years and he alone spent amount from the medical expenditure and other expenditure of the two special children. He further stated that the first respondent separated from the company of the petitioner on her own accord because of her illegal relationship with someone.

4.On the side of the first respondent to prove the claim, she has examined herself as P.W.1 and marked Ex.P1 to Ex.P12. The petitioner herein has examined himself as R.W.1 and marked Ex.R1.

5.According to the first respondent, the petitioner was a retired army man receiving the pension and also has agricultural land and doing agricultural activity along with the pension and earning more than a sum of Rs.35,000/- per month and she has to bear medical expenditure



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of the two special children and she incurred huge amount for medical expenditure and hence, she sought maintenance of Rs.35,000/- per month. The learned trial Judge after considering the evidence, granted maintenance of Rs.20,000/- per month. Challenging the same, the petitioner has filed this criminal revision case before this Court.

6.The learned counsel for the petitioner submitted that the petitioner was receiving only a sum of Rs.29,250/- per month as pension, but, the learned trial Judge has granted a sum of Rs.20,000/- per month as maintenance to the respondents, which is not proportionate. Further, the learned trial Judge failed to consider that the petitioner alone bore the educational expenditure by borrowing money from a financier. Therefore, he seeks for dismissal of the maintenance petition, by allowing this criminal revision case.

7.The learned counsel for the respondents submitted that the first respondent is living with two special children and one female child. Therefore, the grant of maintenance amount of Rs.20,000/- is reasonable.



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He also submitted that the argument of the petitioner that the learned trial Judge has unreasonably granted a sum of Rs.20,000/- per month as maintenance to the respondents is not correct. But, the learned trial Judge has correctly considered the plight of the respondents and granted a sum of Rs.20,000/-. Hence, he prayed for dismissal of this criminal revision case.

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

9.The petitioner admitted the relationship between him & the first respondent and the birth of the children. He also admitted that two children are special children and the female child is studying 12th standard. The only contention of the learned counsel for the petitioner is that he is leading his life with pension of Rs.29,250/- only. It is the specific case of the first respondent that apart from the pension amount, the petitioner has lands and doing agricultural activities and



earns more than a sum of Rs.35,000/- per month. Apart from that the first respondent has to take care of the two special children and one female child.

10. In view of the above said circumstances, grant of the amount of Rs.20,000/- to maintain two special children and one female child is reasonable amount and the same is in accordance with the following guidelines of the Hon'ble Supreme Court in the case of **Rajnesh v. Neha**, reported in **(2021) 2 SCC 324** relating to determining the monthly maintenance:

- “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.*



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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."*

11. The learned trial Judge, after considering the above aspect and also taking into account of the present day cost of living and the educational expenditure of the children, granted reasonable amount of Rs.20,000/- as a monthly maintenance to all the respondents. This Court does not find any infirmity and perversity in the impugned order. The Hon'ble Supreme Court repeatedly held that the revisional Court has no jurisdiction to interfere with the quantum of maintenance awarded by the learned trial Judge unless it is perverse. In this case, the learned trial Judge considered the income of the petitioner and special circumstances and decided the issue in accordance with law.



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12. For the above said reasons, this Criminal Revision case fails and the same is dismissed. The petitioner is hereby directed to deposit the arrears amount to the respondents within a period of two months from the date of receipt of a copy of this order after deducting the amount, which has already been paid. Consequently, connected criminal miscellaneous petitions are closed.

05.06.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
sbm

To

- 1.The Judicial Magistrate,
Uthamapalayam.
2. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

sbn

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