



*Crl.R.C.(MD).No.374 of 2021*

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 29.04.2024

CORAM

**THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

**Crl.R.C.(MD).No.374 of 2021**

**and**

**Crl.M.P.(MD).No.3809 of 2021**

Ashok

...Petitioner / Respondent

Vs.

1.Selvi

2.Minor Koshika

3.Minor.Dhanshika

... Respondents/Petitioners

**PRAYER** : Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records from the learned Judicial Magistrate No.II, Usilampatti, Madurai District made in M.C.No.14 of 2019, dated 19.02.2021 and set aside the same by allowing the Criminal Revision Case.

For Petitioner : Mr.C.Ezhilarasu

For R1 : Mr.M.Jothi Basu



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### **ORDER**

This Criminal Revision has been filed to set aside the order passed in M.C.No.14 of 2019, dated 19.02.2021 on the file of the learned Judicial Magistrate No.II, Usilampatti, Madurai District.

2. The brief facts of the case is that the petitioner married the first respondent on 05.06.2011. During the subsistence of marriage, the second and third respondents were born. Due to some matrimonial dispute between the first respondent and the petitioner, the first respondent left the matrimonial home along with her children and started living with her parents. Thereafter, the first respondent herein filed a petition under Section 125 Cr.P.C., in M.C.No.14 of 2019, claiming maintenance from the petitioner, before the learned Judicial Magistrate No.II, Usilampatti, Madurai District.

3. After full-fledged trial, the Court below has allowed the petition in part filed by the first respondent and awarded a sum of Rs.3,000/- each to the respondents towards maintenance amount. Aggrieved over the same, the



petitioner herein has filed this Criminal Revision Case before this Court.

4. The learned counsel for the petitioner would submit that the first respondent is earning more than Rs.50,000/- from doing finance business and also through cattle farm. However, the same was not considered by the learned trial Judge. He would further submit that the petitioner was working only as a temporary employee in the Transport Corporation. Hence, he seeks for the dismissal of the maintenance amount awarded in favour of the respondents.

5. Per contra, the learned counsel for the 1<sup>st</sup> respondent would submit that even though it was submitted by the petitioner that the first respondent is earning more than Rs.50,000/- by doing finance business and through cattle farm, no evidence was produced. Hence, the learned trial Judge has disbelieved the said version. The petitioner has admitted in the cross examination that he was working as temporary employee in the Transport Corporation and considering the same, the learned trial Judge has awarded Rs.3,000/- each to the respondents. Hence, he seeks for the



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confirmation of the maintenance award passed by the Court below.

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6. This Court has considered the rival submissions on either side and perused the materials available on record and the impugned order.

7. As on date, the marriage is admitted and birth of the children also admitted. Hence, this Court need not go into the issue of relationship. So far as, quantum of maintenance is concerned, the petitioner admitted that he was working as temporary employee in the Transport Corporation and he has sufficient earning. Even though the petitioner pleaded that the first respondent was earning more than Rs.50,000/- by having cattle farm and doing finance business, no evidence was produced and the petitioner was duty bound to establish the same. Hence, mere pleading without evidence is not proof of fact. In this aspect, it is relevant to note the judgment of the Hon'ble Supreme Court reported in the case of **Swapan Kumar Banerjee v. State of W.B., (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*



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*evidence. In the absence of any such evidence no presumption can be raised that the wife is earning sufficient amount to support herself.*

9.The Hon'ble Supreme Court laid the following guidelines in the case of **Rajnesh v. Neha, reported in (2021) 2 SCC 324** to determine 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.*
- 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.”*



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10. 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.3,000/- each as a monthly maintenance to the respondents. This Court does not find any infirmity and perversity in the impugned order. The Hon'ble Supreme Court repeatedly has 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 decided the issue in accordance with law.

11. For the above said reasons, this Criminal Revision case fails and the same is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

**29.04.2024**

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

*Indu/sbn*



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- 1.The learned Judicial Magistrate No.II,  
Usilampatti, Madurai District.
- 2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.K.RAMAKRISHNAN, J.**

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