



Crl.R.C.(MD).No.386 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.386 of 2023

and

Crl.M.P(MD).Nos.5746 and 10057 of 2023

P.Patturaja

... Petitioner /Respondent

Vs.

1. C.Valliammai

2. Minor Bharathi Perumal

3. Minor Muthu Selvam

... Respondents/ Petitioners

(2nd and 3rd Respondents represented through
their mother, Natural Guardian/1st Respondent)

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the impugned order in M.C No. 37 of 2020 dated 19.12.2022 on the file of the Family Court, Thoothukudi and set aside the same.



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For Petitioner : Mr.I.Pinaygash

For Respondents : Mr.R.Balakrishnan

ORDER

The petitioner/husband filed this petition challenging the maintenance award granted in M.C No.37 of 2020 dated 19.12.2022 by the Family Court, Thoothukudi.

2.The petitioner/husband filed the revision petition challenging the maintenance order granted in favour of the respondents herein. The first respondent is the wife and the respondents 2 and 3 are their children. The first respondent alleged that the petitioner married her on 20.08.2004. During their wedlock, the respondents 2 and 3 were born. Thereafter, there was some dispute between the parties and hence, the first respondent left the matrimonial home. In the said situation, the first respondent without any means to meet her livelihood, filed a petition in M.C No.37 of 2020 claiming maintenance under Section 125 of Cr.P.C., before the Family Court, Thoothukudi, claiming maintenance of Rs. 10,000/- for her and Rs.10,000/- each to the respondents 2 and 3. In the petition,



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she stated that the petitioner is running a driving school and doing real estate business and he also is receiving monthly pension of Rs.20,000/-.

3.The petitioner/husband herein filed a counter before the trial Court denying all the allegation and specifically stated that she is working as teacher and earning sufficient income to maintain herself. Hence, he seeks for dismissal of the maintenance case.

4.The learned trial Judge after considering documents marked as Ex.P1 to Ex.P7 and the evidence of the first respondent, namely, P.W.1 and considering the evidence of R.W.1 and documents marked as Ex.R.1 to Ex.R.3 granted maintenance to the respondents stating that the petitioner is duty bound to pay monthly maintenance of Rs.3,000/- to the first respondent and Rs.5,000/- each to the respondents 2 and 3. Challenging the same, the petitioner/husband herein has filed this present revision case.

5.The learned counsel appearing for the petitioner submitted that the husband/petitioner is receiving only Rs.20,000/- as monthly pension and hence, the order of granting maintenance of Rs.15,000/- is not in accordance with law.



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He further submitted that no evidence was adduced to prove the income of the petitioner. Further, the first respondent herself is working as a teacher and the same was not properly considered by the trial Judge. Hence, he seeks to allow this petition.

6.The learned counsel appearing for the respondents submitted that the amount granted by the learned trial Judge as such is a meagre amount and hence, he seeks for confirmation of the award. Further, he submitted that no evidence was adduced on the side of the petitioner to prove that the first respondent is working as teacher. Therefore, All the aspects were considered by the learned trial judge and order was passed. Hence, he seeks for dismissal of this petition.

7.This Court considered the submission made by both sides and also perused the materials available on records and the impugned judgment passed by the Court below.

8. In this case there is no dispute regarding the relationship. The specific case of the petitioner is that the 1st respondent is working as a teacher and received the salary. The 1st respondent admitted that in the year 2012 she was



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allowed to work in a school on the consolidated pay of Rs.7700/- and with the said amount she is unable to live with her two minor children.

9. There is no dispute that the petitioner received Rs.10,70,000/- as a retirement benefit and received pension and other income of Rs.27,000/- per month. The Learned Trial Judge considering the above facts granted totally Rs.13,000/- as a monthly maintenance to the three respondents. In the present day cost of living, the said amount is very low. But the learned trial Judge considered the overall circumstances and granted Rs.3,000/- to the wife and Rs.5,000/- each to the two children and this Court concurs with the said finding of the Learned Trial Judge on the ground that the same was in accordance with the guidelines issued by the Hon'ble Supreme Court 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.*



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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.”*

10. The learned trial Judge, after considering the above aspect and also taking into account the present day cost of living and the educational expenditure of the children, granted a reasonable amount of Rs.13,000/- as monthly maintenance to 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 decided the issue in accordance with law. To prove the same, he has not produced any evidence. Hence, any pleadings without evidence is not proof of fact. When the petitioner raised the plea that the 1st respondent is working as teacher, it is his duty to prove the same and the same was reiterated by the Hon'ble Supreme Court in the case of **Swapan Kumar Banerjee Vs State of W.B.**, reported in **2020 (19) SCC 342:**



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“10. No evidence has been led to show what it 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.”

11.For the above said reasons, this Criminal Revision case fails and the same is dismissed. Consequently, the connected criminal miscellaneous petitions are closed.

23.04.2024

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

vsg

To

1. The Judge,
Family Court,
Thoothukudi.
2. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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