



Crl.R.C.(MD).No.385 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2023
Pronounced on : 19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.385 of 2023
and
Crl.M.P.(MD).No.5737 of 2023

P.Joseph Sahayaraj

... Petitioner

Vs.

1.R.Rani
2.Minor.Lakshan
(Minor the second respondent is represented
through his mother and natural guardian,
first respondent)

... Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the order passed in M.C.No.35 of 2020 dated 16.12.2022 on the file of the Family Court, Dindigul.

For Petitioner : Mr.A.Amala

For Respondents : Mr.V.Karuna

ORDER

This petition is filed to set aside the order passed in M.C.No.35 of 2020



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dated 16.12.2022 on the file of the Family Court, Dindigul.

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2.The marriage between the petitioner and the first respondent was solemnized on 13.12.2018. Out of the marriage, the second respondent was born on 22.08.2019. At the time of marriage, the parents of the first respondent gave five sovereigns of gold jewels to the petitioner. The petitioner is working as an office Assistant at St. Joseph Higher Secondary School, East Masi Street, Madurai. The first petitioner got a degree of B.Sc., B.Ed. Subsequently, the petitioner received jewels from the first respondent, in order to get job to her. But, he neither got any job nor returned the jewels to the first respondent. Thereafter, the petitioner pledged the sale deed of the house and got a loan from LIC for Rs.13,00,000/- and given to his three sisters. The petitioner used to take alcohol and come in the mid-night to the house and abused the first respondent with foul language and also assaulted her. As per the instigation of the petitioner's sisters, he demanded jewels and money from the first respondent to pay the loan received from the LIC. The petitioner demanded further dowry and harassed the first respondent. Then, the first respondent gave a complaint before the All Women Police Station, Dindigul. Thereafter, in view of the above strained relationship, the first respondent/wife filed the maintenance claim



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against the petitioner/husband in M.C.No.35 of 2020 on the file of the Family Judge, Dindigul. He not only failed to maintain the respondents and he did not even pay for his child's education. In the said circumstances, he is liable to pay maintenance of Rs.5,000/- to the first respondent and Rs.4,000/- to the second respondent.

3.The husband denied the allegation made by the first respondent and also specifically stated that before the marriage, the first respondent was working at Union office, Oddanchatram and she is getting a salary of Rs.25,000/-. Now, also the first respondent continues in her job. The petitioner submitted that he got a loan of Rs.13,00,000/- from LIC and the same is paid through his salary account. He further submitted that the petitioner called the first respondent to live with him, but, she refused to live with him. He further submitted that the first respondent never allowed the petitioner to see the second respondent. Hence, he seeks dismissal of the maintenance claim petition.

4.To prove his claim the first respondent examined herself as P.W.1 and examined another witness P.W.2 and marked exhibits as Exs.P.1 to P8. The petitioner examined himself as R.W.1 and examined another witness as R.W.2



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and marked exhibits as Exs.R.1 and R2.

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5.The learned trial judge after considering the above documents and also Ex.R.2 namely assets affidavit of the petitioner granted maintenance of Rs.5,000/- to the first respondent and Rs.4,000/- to the second respondent till his attaining the majority from the date of the petition. Challenging the same, the petitioner filed this revision before this Court on the ground mentioned in the memorandum of grounds of revision.

6.The learned counsel appearing for the petitioner submitted that the Court below failed to consider the specific case of the petitioner that the wife/first respondent was working in the Panchayat union office and earned more than Rs.25,000/- per month. R.W.2 deposed that he is working in the union office. Hence, the learned trial judge ought to have considered the above while granting the maintenance. The learned trial judge failed to consider that the first respondent willfully refused to live with the petitioner without any reason. Hence, she is not entitled to claim maintenance. He further submitted that the petitioner filed a petition in IDOP.No.343 of 023 pending before the Chief Family Court, Madurai, seeking for restitution of conjugal rights. The learned counsel appearing for the petitioner submitted that the petitioner had taken



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housing loan from LIC for Rs.13,00,000/- and hence, he has to pay monthly instalment to the tune of Rs.15,000/-. Hence, the award of amount is higher in considering the peculiar circumstances of the case and therefore, he seeks for interference in the quantum.

7.The learned counsel appearing for the respondents submitted that granting of maintenance of Rs.9,000/- to both the respondents is itself meagre amount considering the present day cost of living. The learned trial judge considered all the aspects and granted Rs.9,000/-. The learned counsel further submitted that even though they took the plea that the first respondent is working in the Union Office, at Reddiyarsathiram, no evidence was adduced to prove the same. In the said circumstances, the learned trial judge order is in accordance with law. Hence, he seeks for dismissal of the revision.

8. This Court considered the rival submission made on either side and also perused the records and precedents relied upon by them.

9. The petitioner admitted the relationship of the respondent. Hence, there is no dispute relating to the marriage. He also filed a petition for restitution of



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conjugal rights. In view of the admitted relationship in this case, this Court is inclined to consider the quantum of maintenance. The submission of the learned counsel for the petitioner is that the first respondent is working in the Panchayat Union office, Reddiyarchathiram and hence she is not entitled to claim maintenance. The claim of the petitioner that the first respondent is working and she has sufficient income from her own source is without evidence. 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 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.,

10. In this case, no evidence was produced to prove that the first respondent was working in the said office and earning sufficiently to meet the monthly livelihood expenditure of both herself and the child. But in the considered opinion of this Court, the petitioner failed to prove the employment of the first respondent/wife and she has been earning sufficiently to meet their livelihood expenditure. Therefore, this Court is not inclined to accept the



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argument of the learned counsel for the petitioner that the first respondent was working and sufficiently earning.

11.The petitioner is getting a salary of Rs.33,770/- per month after deduction. To prove the income of the petitioner, Ex.P.6 was produced by the first respondent and the same was supported by his co-employee P.W.2. In the said circumstances, the learned trial judge considered the income of the petitioner and the status of the parties and the present day cost of living, granted only a sum of Rs.5,000/- to the first respondent and Rs.4,000/- to the second respondent. The learned trial judge also considered the guidelines issued by the Hon'ble Suprme Court in the case of ***Rajnesh Vs. Neha***, reported in ***2021 1 MLJ Crl. 124 (SC)*** and also in the case of ***Kalyan Dey Chowdhury Vs.Rita Dey Chowdhury*** reported in ***2017 3 CTC 209***. In the said circumstances, the learned trial Judge correctly fixed the reasonable amount and this Court finds no reason to interfere the quantum of maintenance.

12.According to the first respondent, the petitioner demanded further dowry and a sum of Rs.2,00,000/- and continuously harassed the petitioner. It is further alleged that when she went to her sister's house during her pregnancy, on



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15.08.2019, at 08.00 p.m, the petitioner in a drunken state demanded dowry and also insisted to execute the divorce deed. Hence, she gave a complaint before the all women Police Station, Dindigul. He also appeared during the enquiry and gave an undertaking that he will not insist any further of dowry. In the mean time, the second respondent was born on 22.08.2019. In the above circumstances, the first respondent left the matrimonial home with reasonable cause and hence, the contention of the petitioner's case that she voluntarily left the matrimonial home is not correct and atmosphere in the matrimonial home was not conducive to lead a peaceful life in the matrimonial home. In view of the above allegation, the first respondent has a reason for separate living from the petitioner. Hence, the contention of the petitioner that the first respondent voluntarily left the matrimonial home is not correct.

13.In view of the above discussion, this Court is unable to accept the contention of the petitioner to dismiss the maintenance petition filed by the first respondent and finds no merit in this case. Accordingly, this Criminal Revision Case stands dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

19.03.2024

NCC : Yes/No



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Index : Yes/No

Internet: Yes/No

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To

1. The Learned Judge,
Family Court, Dindigul.
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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Pre-delivery Order made in
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