



Crl.R.C.(MD).No.739 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 13.06.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD)No.739 of 2023

K.Prasanna

... Petitioner

Vs

1. K.Sankareeswari,

2. Minor Meenashi,
(2nd Respondent representing through her
Natural guardian 1st respondent)

... Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the entire records pertaining to the case in MC.No.106 of 2018 on the file of the Family Court, Madurai order dated 27.01.2023 and set aside the same.

For Petitioner : M/S.Laxman K.R.

For Respondents : Mr.R.Srinivasan



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ORDER

This Criminal Revision Case has been filed against order dated 27.01.2023 passed in M.C.No.106 of 2018, on the file of the Family Court, Madurai.

2. The marriage between the petitioner and the first respondent was solemnized on 08.09.2013 and one girl child was born during the wedlock. Due to some genetic disorder of the child, dispute arose between the petitioner/husband and the first respondent/wife. Hence, the petitioner/husband has deserted the first respondent and the child. Thereafter, the petitioner/husband has filed a divorce petition and subsequently, the first respondent/wife has filed a petition for restitution of conjugal rights. Pending the same, the first respondent/wife has filed a maintenance claim petition under Section 125 of Cr.P.C.

3. The petitioner/husband denied the allegation made in the maintenance petition and also he disputed the right to claim the maintenance amount. He further stated that he has no income. Hence, he seeks for dismissal of the maintenance claim petition.



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4. The learned Judge, Family Court, has dismissed the divorce petition and has allowed the restitution of conjugal rights petition filed by the first respondent/wife. The trial Judge has also directed the petitioner/husband to pay maintenance amount of Rs.5,000/- to the first respondent/wife and Rs.10,000/- to the second respondent/minor child. Challenging the same, the petitioner/husband has filed this revision petition to set aside the order of the trial Judge.

5. The learned Counsel for the petitioner submitted that the first respondent/wife has not produced any documents to prove the income of the petitioner/husband. Without any proof, the award of maintenance amount to the respondents is not legally maintainable. He further submitted that the petitioner was B.E., graduate, he was initially working with a private sector and subsequently, he lost the job. Hence, he is unable to pay the maintenance amount.

6. The learned Counsel for the respondents submitted that after the marriage, the child was born with genetic disorder. Due to that, the petitioner/husband deserted his wife as well as the child. He further submits that



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the plea of the petitioner stating that he is jobless is not a ground to deny maintenance.

7. The learned trial Judge after considering the above said circumstances and also considering the medical expenditure of the child, has directed the petitioner/husband to pay the maintenance amount of Rs.5,000/- to the first respondent/wife and Rs.10,000/- to the second respondent/minor child. The learned trial Judge has correctly determined the maintenance amount as per the guidelines laid down by the Hon'ble Supreme Court in the case of ***Rajnesh vs. Neha*** reported in ***2021(2) SCC 324***.

8. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

9. It is the admitted fact that the child was born with genetic disorder. Hence, the petitioner deserted his wife and the child. From the admission of the petitioner/husband, it is seen that the medical expenditure of the child is expensive and he also undertakes to pay the medical expenditure.



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10. The petitioner/husband stated that he has no income. Therefore, he seeks to dismiss the claim of the respondents. The said plea of the petitioner is misconceived one and the same is not legally tenable. Once the wife starts the family with her husband, the wife becomes the husband's family member, and the husband is duty-bound to maintain his wife and child. This moral obligation emanated from the following words of the Manu:-

“The aged parents, a virtuous wife and an infant child must be maintained even by committing a hundred misdeeds.”

The said moral obligation becomes statutory duty as per Section 125 Cr.P.C. It creates a legal obligation upon the husband to maintain his wife and the child. The petitioner is a healthy man and he is duty bound to maintain his wife. Therefore, the plea of the husband that he is not earning sufficient income is not a ground to disown his liability to pay the monthly maintenance to his wife. The learned trial Judge considering the guidelines issued by the Hon'ble Supreme Court in the case ***Rajnish vs. Neha*** reported in ***2021(2) SCC 324*** and considering the medical expenditure of the special child and costs of living correctly granted monthly maintenance of Rs.15,000/- to both the respondents. Therefore, this Court finds not merit in this revision case.



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11. Accordingly, this Criminal Revision Case stands dismissed and the order passed in M.C.No.106 of 2018, by the learned Judge, Family Court, Madurai, dated 27.01.2023 is hereby confirmed.

13.06.2024

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

jbr/sbn

Note: Issue order copy on 08.01.2025

To

The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

jbr

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