



Crl.R.C.(MD)No.595 of 2023
and Crl.M.P.(MD)No.8614 of 2023.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 18.07.2024

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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and

Crl.M.P.(MD)No.8614 of 2023

Prasanth

... Petitioner/Respondent

Vs.

1.Deepa

2.Minor Saivarsha

*(Second respondent through her mother
and guardian the first respondent)*

... Respondents/Petitioners

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the order dated 16.04.2023 made in M.C.No.19 of 2021 on the file of the Family Court, Dindigul and set aside the same.

For Petitioner : Mr.S.V.Muthusamundeeswaran

For Respondents : Mr.P.Selvakamatchi

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ORDER

This Criminal Revision has been filed by the petitioner/husband challenging the maintenance amount granted in M.C.No.19 of 2021 on the file of the Family Court, Dindigul, dated 16.04.2023.



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2. The petitioner and the first respondent were married on 04.03.2018. At the time of marriage, the petitioner was earning a sum of Rs.45,000/- per month. Fifteen sovereign jewels, house hold articles and also two sovereign neck chain were given to the first respondent. Further Rs,2,50,000/- cash also was given by the parents of the first respondent to the parents of the petitioner. Thereafter, the petitioner and the first respondent had lived for one month. On 03.04.2018, they had gone to Chennai and started their family life in a rental house. Due to the wed lock one female child was born on 10.01.2019. Thereafter, the first respondent with her child stayed at her parent's house for three months. On 10.04.2019, the parents of the petitioner visited the first respondent parent's house and brought the child and mother to Chennai house. Thereafter, due to Covid-19, they vacated the rental house at Chennai and left to Dindigul on 15.05.2020 and stayed in the petitioner's parent's house. After three months, the petitioner's mother died afflicted by corona in the month of August. The petitioner abused the first respondent stating that she was the case for the death of his mother due to her ill-treatment. But the petitioner did not care her child. The first respondent's parents had given some amount every month for family expenses. The respondent is the only legal heir to her parents. On 20.10.2020, due to quarrel, the petitioner threw the first respondent out with her child.



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Thereafter, the first respondent and her child started living with her parents. The petitioner refused to live with the first respondent even after conducting panchayat many times. The petitioner has filed H.M.O.P.No.96 of 2021 for divorce and the same is pending. The first respondent is willing to live with the petitioner. The first respondent is a graduate but not permanently employed. The first respondent is earning Rs.3,000/- per month by doing coolie work. On 27.11.2020, the petitioner has sent legal notice for divorce and the first respondent sent reply notice on 18.03.2021. The first respondent has lodged a complaint before All Women Police Station, Dindigul for re-union with the petitioner. Hence, the maintenance amount may be awarded.

3.In the said situation, the petitioner has filed H.M.O.P.No.96 of 2021 seeking divorce. Pending the same, she filed M.C.No.19 of 2021 before the Family Court, Dindigul, claiming the maintenance of Rs.10,000/- per month to the respondents.

4.The petitioner is a B.E. graduate and he is earning of Rs.45,000/- per month and hence she seeks maintenance of Rs.20,000/- as monthly maintenance. The petitioner has filed a counter denying all the allegation made in the petition and also reiterated the allegation stated in the H.M.O.P. Petition.



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He has also specifically pleaded that the first respondent left the matrimonial home without any reasonable cause. Hence he is not liable to pay the amount.

5.To prove the maintenance claim, the first respondent examined herself as P.W.1 and also adduced the documents as Ex.P.1 to Ex.P.6 and the petitioner was examined himself as R.W.1 and marked the documents as R.W.1 to R.W.4.

6.The learned trial Judge after considering the entire evidence of the petitioner and the first respondent and also considering the admission of the petitioner that he is earning more than Rs.59,000/- per month granted maintenance of Rs.6,000/- to the first respondent and Rs.6,000/- to the second respondent. Challenging the same, the petitioner has filed this revision before this Court.

7.The learned Counsel for the petitioner has raised the following points:-

i)the petitioner has left the matrimonial home without any reasonable cause and also the husband obtained divorce before the Court below on the grounds of desertion. Hence he is not liable to pay the maintenance;



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ii)the petitioner is earning only a sum of Rs.35,000/- and hence he seeks for reduction of the maintenance amount; and

iii)the first respondent is also the qualified person and she has not shown any evidence to show her income, but she is earning according to the pleadings. Hence he seeks for reduction of the amount.

8.The learned Counsel further submits that the petitioner himself admitted his monthly income is Rs.57,900/-. Considering the same, the learned trial Judge granted Rs.12,000/- to the respondents as monthly maintenance.

9.The learned Counsel for the first respondent/wife submits that divorce granted on the ground of desertion is not a ground to order maintenance under Section 125 of Cr.P.C. until re-marriage of the first respondent. The said dictum was laid by the Hon'ble Supreme Court of ***Dr.Swapan Kumar Banerjee V. State of West Bengal reported in (2020) 19 SCC 342***. The learned Counsel for the respondent/wife further submits that in the event of any proof of the reduction of the salary that may be agitated in the proper proceedings before the learned trial Court under Section 125(6) of Cr.P.C. Hence she seeks for dismissal of this revision.



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10.From the records, it is clear that the divorce was granted on the ground of desertion, as rightly argued by the learned Counsel for the respondent/wife as per the judgment of the Hon'ble Supreme Court ***Dr.Swapan Kumar Banerjee V. State of West Bengal reported in (2020) 19 SCC 342***, the grant of divorce on the ground of desertion is not a ground to disown the liability under Section 125 of Cr.P.C. So far as the maintenance amount is concerned, the petitioner during the course of the trial has admitted his income as Rs.57,900/-.

11.In the said circumstances, the plea of the petitioner that he is now earning only Rs.35,000/- is to be agitated in a separate application before the learned trial Judge.

12.The learned trial Judge granted the maintenance on the basis of the evidence adduced by both the parties during the proceedings before the learned trial Judge. Hence this Court inclines to dispose of this criminal revision case with the following observations:-

i)the order passed by the learned Judge, Family Court, Dindigul in M.C.No.19 of 2021 dated 16.04.2023 is hereby confirmed; and



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ii)the petitioner is at liberty to raise the plea of his reduction of the income and the consequent reduction of the amount before the learned trial Judge in appropriate application and the same may be considered by the learned trial Judge on merits.

13.With the above observations, this criminal revision case is disposed of.
Consequently, connected miscellaneous petition is closed.

18.07.2024

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

The Judge, Family Court, Dindigul.



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K.K.RAMAKRISHNAN, J.

RJR/sbn

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