



Crl.R.C.(MD).No.623 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 22.04.2024

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.623 of 2023
and
Crl.M.P(MD).No.8867 of 2023

Parthipan

... Petitioner

Vs.

Manju

... Respondent

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 order passed by the learned District Munsif Cum Judicial Magistrate Court, Rameshwaram, in M.C.No.07 of 2022 dated 06.04.2023 and set aside the order by allowing this revision.

For Petitioner : Mr.M.Kannan

For Respondent : Mr.V.Balaji



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ORDER

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The petitioner who is the husband filed this revision challenging the maintenance award of Rs.10,000/- to the respondent granted in M.C.No.07 of 2022, by the learned District Munsif Cum Judicial Magistrate Court, Rameshwaram, dated 06.04.2023.

2.The respondent has filed M.C.No.7 of 2022 with the following averments:-

The respondent who is the wife stated that the petitioner married the respondent on 01.11.2017. Thereafter, there was some marital discord, between the parties and hence, the respondent left the matrimonial home. In the said situation, the respondent without any means to meet her livelihood, filed a petition in M.C.No.7 of 2022 under Section 125 of Cr.P.C., before the District Munsif cum Judicial Magistrate, Rameshwaram, claiming maintenance of Rs. 10,000/- for her. In the petition, it was mentioned that the petitioner is running travel agency and he also received monthly salary of Rs.30,000/-.



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3.The petitioner has appeared and filed a counter specifically denying the above allegation made in the petition and stated that his mother is aged person and she is a paralytic patient and bedridden. Apart from that, the respondent is working in Deva Hospital, Madurai. Hence, she has sufficient means to maintain herself and seeks dismissal of the maintenance petition.

4.The learned trial judge marked documents on the side of respondent as Ex.P1 to Ex.P3 and examined the respondent, namely, P.W.1 and another witness/P.W.2 and on the side of the accused, no one was examined and he also never got into the witness box to deny the allegations made against him. The learned trial judge considering the above documents and the evidence of witness, granted maintenance to the respondent stating that the petitioner is duty bound to pay a monthly maintenance of Rs.10,000/- to the respondent. Challenging the same, the petitioner/husband herein has filed this present revision case. This Court at the time of granting interim stay, passed conditional order and the same was not complied with by the petitioner. Hence, this case was taken up for final disposal.



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5.The learned counsel for the petitioner would submit that no adequate evidence was produced to prove the income of the petitioner and without any proof of income, the learned trial Judge fixed maintenance of Rs.10,000/- which is not in accordance with law. The learned counsel would further submit that even as per the evidence of the respondent, she worked in Deva Hospital, Madurai for 15 days, which reveals that she was working. The first respondent has adequate means to meet out her maintenance expenditure and the same was not considered. Therefore, he seeks to set aside the order.

6. The learned counsel for the respondent/wife would submit that in the cross examination, she admitted that she worked only for 15 days and her continuous employment in the hospital is not proved. Hence, there is no reason to interfere with the order of the trial Court. He also further submitted that no evidence was adduced to prove the independent source of the respondent's income. Hence, he seeks to dismiss this revision.

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



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8.The relationship between the petitioner and the 1st respondent is not in dispute. As on date, there is no HMOP proceeding pending between them. Due to some matrimonial dispute, they are living separately. The petitioner has not adduced any evidence to prove the independent source of income of the respondent to maintain herself. 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.**, 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.

9.It is admitted case of the petitioner that his monthly salary is Rs.30,000/-. The learned trial Judge has considered the above aspect and correctly fixed the monthly maintenance of Rs.10,000/- to respondent, on the basis of the oral and documentary evidence. Since in all aspects the learned trial Judge correctly decided the entitlement of the respondent to claim maintenance from the petitioner, and reasonably fixed monthly maintenance of Rs.10,000/- to the respondent, considering the earning capacity of the respondent and needs of the



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respondent and socio economic status of the parties and present day cost of living, this Court does not find any ground to differ with the findings of the learned trial Judge. Further, the said award is in consonance 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.*
- 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. Therefore, the petitioner has a duty to maintain her and this Court finds no merit in the contention of the learned counsel for the petitioner and this Court finds no ground to interfere with the order of the learned trial Judge.

11. Accordingly, this Criminal Revision Case is dismissed and the order passed by the learned District Munsif Cum Judicial Magistrate, Rameshwaram, in M.C.No.07 of 2022, dated 06.04.2023 is hereby confirmed. Consequently, the connected miscellaneous petition is closed.

22.04.2024

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

To

1. The learned District Munsif
cum Judicial Magistrate,
Rameshwaram.
2. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

vsg

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