



Crl.R.C.(MD).No.763 of 2024

'BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.08.2024

PRONOUNCED ON : 06.09.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

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1.A.Yaasmin Baanu
2.Minor.A.Haleema Banu
(represented by her mother and
natural guardian Yaasmin Baanu
... Petitioners/Petitioners/Petitioners

Vs.

M.Abdul Hakkem ... Respondent/Respondent/Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, challenging the order dated 19.01.2024 passed in Cr.M.P.NO.266/2023 in M.C.NO.243 of 2023, on the file of the Family Court, Madurai.

For Petitioner : Ms.B.Asha

For Respondents : Ms.Fazil Kirmani



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ORDER

This Criminal Revision is directed against the order passed in Cr.M.P. (MD)No.266 of 2022 in M.C.No.243 of 2022, dated 19.01.2024, on the file of the Family Court, Madurai.

2. It is not in dispute that the marriage between the first petitioner and the respondent was solemnized on 03.07.2011 at Mohideen Andavar Mosque, Seppalakottai, Uthamapalayam as per Muslim rites and customs and due to their wedlock, they were blessed with a female child namely Fhaleema Banu – second petitioner herein.

3. The first petitioner for herself and on behalf of her minor daughter had laid a petition under Section 125 Cr.P.C., claiming maintenance against the respondent/husband and that the said case is pending in M.C.No.243 of 2022, on the file of the Family Court, Madurai. During the pendency of the main maintenance claim, the petitioners have filed an application under Section 125(2) Cr.P.C., seeking interim maintenance of Rs.10,000/- per month to the first petitioner and Rs.15,000/- per month to the second petitioner and Education fee



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of Rs.14,350/- per annum, by alleging that the first petitioner was driven away from the matrimonial home on 31.01.2022 by the respondent and failed to discharge his liabilities towards his wife and daughter, that the second petitioner has been studying 5th standard and her term fees comes around Rs.14,350/-, that the respondent is working as a Branch Manager in SBI Life Insurance Corporation and getting a salary of Rs.1,00,000/- per month and that therefore, the respondent is liable to pay monthly interim maintenance to the petitioners and Educational fees for the second respondent.

4. The respondent has filed counter statement disputing the petitioners' case and further stated that the first petitioner has been living separately without any sufficient reason and she refused to live with the respondent, that the first petitioner had voluntarily taken their minor daughter to Muscat and spoiled her studies, that the first petitioner has been working in a private concern namely Clarisco Solutions Pvt., Ltd., and getting a salary of Rs.41,667/- and she is earning as a Freelance consultant and that therefore, the petition is liable to be dismissed.



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5. The learned Judge, Family Court, after enquiry, has passed the impugned order dated 19.01.2024 directing the respondent to pay a sum of Rs. 10,000/- as interim maintenance to the second petitioner from the date of the petition till the disposal of the main maintenance case and pay the entire tuition fees of the second petitioner every year, but dismissed the claim of the first petitioner. Aggreived by the rejection of the first petitioner's claim for maintenance, the present Criminal Revision came to be filed.

6. The learned Counsel for the petitioners would mainly contend that the learned Judge, without taking any evidence, has passed the impugned order, that the learned Judge, ought to have given an opportunity to the first petitioner to adduce evidence on her side, that the first petitioner is not working in any concern and no salary certificate has been produced by the respondent before the trial Court, that the learned trial Judge, without any evidence, has come to a conclusion that the first petitioner is working in a private concern and was earning nearly Rs.50,000/- per month, that the respondent has not filed his assets and liabilities and that therefore, the impugned order rejecting the first petitioner's claim is liable to be set aside.



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7. The learned Counsel for the respondent would submit that the first petitioner is working in Clarisco Solutions Pvt., Ltd., and is getting salary of Rs.41,667/- per month, that the first petitioner is also earning as Freelance consultant, that the salary certificate from the Company was also filed as a document in the counter affidavit filed in the main petition in M.C.No.243 of 2022 and that since the first petitioner was earning good income, the learned trial Judge has rightly rejected the first petitioner's claim.

8. Admittedly, the petitioners as well as the respondent have not exhibited any documents in the application for interim maintenance in Cr.M.P.No.266 of 2023. The main contention of the petitioners' side is that the first petitioner was not given any opportunity to adduce oral and documentary evidence and that without any evidence, the learned trial Judge has given a finding that the first petitioner has been working in a private concern and was earning more income. The application filed under Section 125(2) Cr.P.C., is only for interim maintenance. The interim maintenance can be decided on the basis of the affidavit filed by both parties and hence, the question of taking oral evidence does not arise at all.



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9. It is not the case of the petitioners that they have produced documents at the enquiry in the above Cr.M.P., but the learned Judge has refused to mark the same. Even the enquiry in the main maintenance claim is of summary in nature and in that scenerio, conducting detailed or elaborate enquiry in the interim maintenance petition is not contemplated and warranted.

10. As rightly contended by the learned Counsel for the respondent, the respondent in his counter statement has specifically taken a stand that the first petitioner has been working in Clarisco Solutions Pvt., Ltd., and is getting Rs. 41,667/- as monthly salary and that she is also earning as Freelance consultant. But the first petitioner has not filed any affidavit disputing the counter averments nor filed any material to disprove the case putforth by the respondent. No doubt, the petitioners have produced retrenchment letter issued by Clarisco Solutions Pvt., Ltd., to the first petitioner where it has been stated that the company has retrenched the serves of the first petitioner as Senior Manager – HR from 29.05.2023. Admittedly, she has not produced the said retrenchment letter before the trial Court.



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11. It is not in dispute that the first petitioner was possessing MBA degree and even according to the first petitioner, she was working as senior HR Manager in a private concern. Considering the educational qualifications and her working in a private concern and taking note of the salary, as stated by the respondent and in the absence of any contra evidence or any affidavit disputing the said averments, the learned trial Judge has rightly rejected the first petitioner's claim and as such, the same cannot be found fault with.

12. The learned trial Judge, taking note of the affidavit filed by the first petitioner in support of her application for interim maintenance and the counter affidavit filed by the respondent and taking note of the arguments put forth by both sides, has passed the impugned order rejecting the first petitioner's claim, but granted monthly maintenance as well as educational expenses to the second petitioner. It is pertinent to note that the interim maintenance is subject to the final adjudication on the main petition. The interim maintenance granted under Section 125(2) Cr.P.C., is only provisional maintenance subject to the final determination. The first petitioner will have sufficient opportunity to adduce oral and documentary evidence at the enquiry in the main maintenance petition.



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Considering the above, this Court is not inclined to interfere with the impugned order passed by the learned Judge of the Family Court.

13. In the result, the Criminal Revision Case is dismissed. Considering the fact that the maintenance petition is pending from 2022 onwards, the learned Judge, Family Court is directed to conduct an enquiry and dispose of the main maintenance petition as expeditiously as possible.

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

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To

The Family Court, Madurai.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in

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