



Crl.R.C.(MD).No.727of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	20.12.2023
Pronounced on	:	09.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). No.727 of 2022
and
Crl.M.P(MD). No.13739 of 2022

K.Muthukumar

... Petitioner

Vs.

1.A.Arasi
2.Minor.Ananya
3.Minor.Rithika

.. Respondents

***(Minor Respondents 2 and 3 represented through
the first respondent)***

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.18 of 2019 dated 06.07.2022 on the file of the Family Court, Virudhunagar District, at Srivilliputhur and allow this criminal revision petition.

For Petitioner : Mr.H.Arumugam

For Respondent : Mr.C.Susi Kumar



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ORDER

This petition is filed to set aside the order passed in M.C.No.18 of 2019 dated 06.07.2022 on the file of the Family Court, Virudhunagar District, at Srivilliputhur.

2.The petitioner/husband filed the revision petition challenging the maintenance order granted in favour of the respondents herein. The first respondent is the wife and second and third respondents are his children. The petitioner married the first respondent on 12.04.2012. Out of their wedlock, the second and third respondents were born. Since both are female children, the petitioner advised the first respondent to get treatment for birth of male child. This led to a dispute. In view of the above dispute, the wife left the matrimonial home and she is living with the children in her parents home. Subsequently, the petitioner filed the H.M.O.P.No.74 of 2019 for divorce. In the said circumstances, the wife made a complaint against the petitioner. Thereafter, in view of the above strained relationship, she filed the maintenance claim against the petitioner in M.C.No.18 of 2019. She further stated that the petitioner is working as engineer in USA and he earn



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more than Rs.77 lakhs per year. In the said circumstances, he is liable to pay the monthly maintenance to the respondents of Rs.50,000/-.

3.The husband denied the allegation made by the first respondent and also specifically stated that he lost his job due to the Corona in USA and now, he is working in a private company and his salary is Rs.15,000/- per month. He also stated that the allegations made by the first respondent is not correct. The proceedings before the learned Family Court in H.M.O.P.No.74 of 2019 seeking interim maintenance is also pending. Hence, he seeks dismissal of the maintenance claim petition.

4.To prove the maintenance, the petitioner namely wife examined herself and her father as P.W.1 and P.W.2 and marked Ex.P1 to P.11. The respondent did not examine himself as party to the proceedings and examined one Naveen as R.W.1 to prove the subsequent employment and his earning of monthly income of Rs.15,000/-, which were marked as Ex.R1 to Ex.R3. The learned trial Judge considered the evidence and granted monthly maintenance of Rs.10,000/- to the first respondent and Rs.20,000/-



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to each of the second and third respondents. Totally, the maintenance amount is Rs.50,000/-. The learned trial Judge disbelieved the evidence of the R.W.1 and the documents with specific finding that the case of the husband, he joined duty on 30.04.2020 is a false one. The petitioner/ husband challenging the maintenance order filed this revision.

5.The learned counsel appearing for the petitioner submitted that there was no proof that the petitioner is earning more than Rs.77 lakhs per year in USA. Further, the learned trial Judge, erroneously disbelieved the evidence of R.W.1 and Exs.R1 to R3. Hence, this Court is to consider the evidence in a proper manner and re-appreciate the evidence and render justice.

6.The learned counsel appearing for the respondents submitted that the petitioner adduced the oral and documentary evidence to prove the income of the petitioner/husband. When the wife specifically took a plea and deposed before the Court that he earned more than Rs.77 laksh per year and also produced some material to show that he was earning said amount,



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the initial burden on the wife to prove her income is established. To disprove the same, the husband did not examine himself as witness to deny all the facts and also did not appear before the Court to prove his case and the defence case. In the said circumstances, the absence of the evidence on the part of the husband, the learned trial Judge correctly held that the petitioner/husband has sufficient means to maintain the respondents. Apart from that, the learned trial Judge correctly disbelieved the evidence of the R.W.1 and his documents. Hence, he seeks for dismissal of the revision.

7. This Court considered the rival submissions made on either side and perused the materials available on records and the impugned judgment and the precedents relied upon by them.

8. The parties admitted the relationship. The petitioner/husband has not disputed the relationship and the birth of child. He also admitted the pendency of the H.M.O.P.74 of 2019 filed by him for divorce. The wife to prove her claim, examined herself and her father as P.W.1 and P.W.2. To show the income of the petitioner, she produced Ex.P6, Ex.P.8, Ex.P9 and



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Ex.P10. The said documents are admitted by the petitioner but he took a plea that he was terminated from the company on 29.07.2019. But, the visa was granted for a period commencing from 03.07.2019 to 31.01.2022. He also travelled on 03.11.2019, 30.11.2019, 09.02.2020, 13.06.2021 on the basis of the said visa. Hence, the learned trial Judge found that the husband took a false plea as if he was terminated from his service. It is the further case of the husband that he joined R.W.1 company on 30.04.2020 and his salary was only Rs.15,000/-. The same was considered by the learned trial Judge on the basis of the notification of the Central Government marked as Ex.P.11, wherein it is revealed that there was no appointment made by any company on account of Covid-19 and held that the said evidence of R.W.1 and Ex.R1 and Ex.R2 are self serving one in order to defeat the claim of the wife. This Court perused the records and concurs with the finding of the learned trial Judge with additional reasoning that it is the duty of the husband to get into the box and prove his case. He has not appeared before the trial Court. He filed a counter affidavit without stating the above facts. In the said circumstances, without any pleading and without any evidence on behalf of the husband, the evidence of R.W.1 cannot be taken as



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corroborative evidence. When, the husband has not deposed his case, this Court takes adverse inference under Section 114 of the Indian Evidence Act.

9.The Hon'ble Supreme Court laid the following guidelines 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.The learned trial Judge considered the above aspect and correctly fixed the monthly maintenance of Rs.50,000/- totally to the respondents, on the basis of the oral and documentary evidence. Since in all aspects the learned trial Judge correctly decided the entitlement of the respondents to claim maintenance from the petitioner, and reasonably fixed monthly maintenance of Rs.50,000/- to the respondents considering the earning capacity of the petitioner and needs of the respondents and social 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.

11.Accordingly, this Criminal Revision Case is dismissed.
Consequently connected criminal miscellaneous petition is also dismissed.

09.01.2024

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

1. The learned Family Court,
Virudhunagar District, at Srivilliputhur.
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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