



Crl.R.C.(MD).Nos.800 and 803 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	:	20.12.2023
Pronounced on	:	09.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). Nos.800 and 803 of 2022

and

Crl.M.P(MD). Nos.9914 of 2022 and 6530 of 2023

Crl.R.C.(MD).No.800 of 2022

1.Sheela

2.Minor.Ashwin

... Petitioners

(Minor second petitioner through her mother 1st Petitioner)

Vs.

Muruganantham

.. Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to order enhancement of the maintenance awarded in M.C.No.67 of 2021 dated 11.06.2022 by the learned Judge, the Family Court, Sivagangai, Sivagangai District, from Rs.8,150/- (Rupees Eight Thousand Hundred and Fifty Only) to Rs.20,000/- (Rupees Twenty Thousand Only) each and allow this revision petition.



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For Petitioner : Mr.T.Kumar

For Respondent : Mr.P.Karthick

Crl.R.C.(MD).No.803 of 2022

Muruganantham

.. Petitioner

Vs.

1.Sheela

2.Minor.Ashwin

... Respondent

(Minor second respondent through her mother 1st respondent)

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the order passed in M.C.No.67 of 2021 dated 11.06.2022 passed by the learned Family Judge, Sivagangai to set aside the same by allowing this revision petition.

For Petitioner : Mr.P.Karthick

For Respondent : Mr.T.Kumar

ORDER

The petition in Crl.R.C.(MD).No.800 of 2022 is filed by wife and child seeking enhancement of the maintenance amount awarded in M.C.No. 67 of 2021 dated 11.06.2022 by the learned Family Judge, Sivagangai,



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Sivagangai District, from Rs.8,150/- (Rupees Eight Thousand Hundred and Fifty Only) to Rs.20,000/- (Rupees Twenty Thousand Only) for each petitioners and allow this revision petition.

2.The petition in Crl.R.C.(MD).No.803 of 2022 is filed by husband seeking to set aside the order passed in M.C.No.67 of 2021 dated 11.06.2022 passed by the learned Family Judge, Sivagangai.

3.The revision petitioner in Crl.R.C.(MD).No.803 of 2022 is the husband and father of the first and second revision petitioners respectively in Crl.R.C.(MD).No.800 of 2022. For better appreciation of the fact, the relationship of the parties are treated as the parties mentioned in the Courts below.

4.The revision petitioner/wife in Crl.R.C.No.800 of 2022 filed the maintenance case in M.C.No.67 of 2021 on the file of the Family Court, Sivagangai, seeking maintenance of Rs.30,000/- for herself and her child Aswin, who is aged about 2 years. In the said petition, she stated that the



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marriage between her and the revision petitioner/husband in Crl.R.C.No.803 of 2023 took place on 04.09.2016. Before the marriage, her husband was working in Dubai. After the marriage, he took her to Dubai under the tourist visa. After expiry of tourist visa period, she returned to the native place of the husband. In the mean time, the wife became pregnant. At that time, the husband and his parents refused to send her for her delivery. In the said circumstances, there was some dispute between the petitioner's family as well as the respondent's family. In the mean time, the wife left the matrimonial home and stayed with her parents. In the parents home, she delivered the child namely the second respondent. Thereafter, the husband filed H.M.O.P.No.15 of 2018 seeking divorce before the Sub Court, Devakottai. Pending the same, the wife filed this maintenance claim seeking the maintenance of Rs.30,000/- for herself and Rs.10,000/- for the second respondent. In the petition, it is averred that the respondent/husband is working as the computer software engineer and earned more than Rs.1,50,000/- per month. Apart from that, he has more properties in the village. She also averred that only to get married, she discontinued her B.Com study at the second year and hence she is unable to get job and



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hence, there is a financial constraint and hence, she filed the above maintenance.

5.The said allegations made by the wife is denied by the husband and he specifically stated that the wife was not inclined to live in matrimonial home along with her in-laws and she voluntarily left the matrimonial home. Further, she has not discharged her duty as wife. So he filed the divorce petition. Apart from that, the wife also made the complaint with false allegations before the Kallal Police Station. In the said circumstances, he is not liable to pay the maintenance. He also denied the averment that he was working in foreign countries. Apart from that, he specifically pleaded that the wife was working in the private company and earned more than Rs.12,000/- per month. In the above situation, he is not liable to pay maintenance amount.

6.The wife proved her claim of maintenance by examining herself as P.W.1 and his mother as P.W.2 and marked the Exs.P.1 to P.3. The respondent/husband examined himself as R.W.1 and he did not produce any



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evidence. On the basis of the available evidence, the learned trial Judge, granted maintenance to the wife of Rs.5,100/- and to the child is Rs.3,050/-. Totally the maintenance amount granted by the learned trial Judge is Rs.8,150/-. The said order was challenged by the husband for filing the revision in Crl.R.C.(MD).No.803 of 2022. To enhance the maintenance amount, wife filed petition in Crl.R.C.(MD).No.800 of 2022. Both the cases were heard together and this Court passed this common order.

7.The learned counsel appearing for the husband submitted that the Court below failed to consider that the wife did not produce any evidence to prove the income of the husband. Further, there was no evidence adduced on the side of the wife to prove his income, that is, he was working in a foreign country and earned more than Rs.1,50,000/- per month. Hence, the award of the amount without determining the monthly income is not legally correct. Apart from that, the Court below failed to consider that the respondent wife was working and earning more than Rs.15,000/-. Without considering the two above aspects, the learned trial Judge granted maintenance of Rs.8,150/-. Hence, he seeks for setting aside the



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maintenance amount.

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8.The learned counsel appearing for the wife submitted that in the summary proceedings, the wife adduced the evidence available with her. The wife took a specific plea and deposed that her husband was working in Dubai and he was earning more than a sum of Rs.1,50,000/- per month and owns a house to the value of Rs.20 lakhs in his village and also has 10 acres of Nanja land and 5 acres of Punja land. The husband has not specifically denied the said fact in his deposition and he also not stated anything about his income from the above source. In the absence of the fact, this Court can easily presume that the petitioner is working in the foreign country as deposed by the wife earning to the extent of Rs.1,50,000/-. He is in a fit physical condition to earn ie, he is a B.Tech graduate and even as per the evidence in the cross examination he deposed that he earned only Rs. 13,000/- in the foreign country as a monthly income. Apart from that, he is not suffering from infirmity to earn. The wife is not duty bound to produce any document relating to the income of the husband. He also submitted that the specific case of the husband that the wife was working and earning



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Rs.15,000/- per month is mere pleading without any evidence and hence, the entitlement of the maintenance from the husband is not liable to be interfered and considering the present day cost of living, educational expenditure, the award of the trial Court is not adequate. In the said circumstances, the learned trial Judge granted maintenance to the wife and child is Rs.8,150/- is not reasonable one. The learned trial Judge, failed to consider the present cost of living and granted maintenance of Rs.5,100/- only to wife and Rs.3,500/- only to the child. Hence, the award amount is liable to be enhanced.

9.The learned counsel appearing for the husband submitted that the respondent was working and earning Rs.15,000/- per month. To prove the same, he did not produce any evidence. It is well settled principle that the husband is to prove the income of the wife, but, he did not produce any evidence. Hence, this Court is not to accept this plea.

10. This Court considered the rival submissions made on either side and perused the materials available on record and the impugned



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judgment and the precedents relied by the parties.
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11. The parties admitted the relationship and the husband filed the H.M.O.P.No.15 of 2018 before the Sub Court, Devakottai, for Divorce. From the record it is clear that before marriage, the husband worked in Dubai. He also stated in his deposition that now also he is working in the foreign country but only disputed the income. Therefore, it is the duty of the husband to disclose the correct particulars about his income. As rightly pointed out by the learned counsel for the wife that her plea and deposition that the husband has own house to the value of Rs.20,00,000/- in his village, and 10 acres nanja land, 5 acres of punja land in the village. The husband deposed before this Court admitting the above fact and took a stand that the said properties belonged to his father. Now, the father is no more and he is in possession of the said property. He also admitted that he travelled in the valuable car belonging to her sister. She also deposed that he was earning more than a sum of Rs.1,50,000/- which was not specifically denied and disproved in accordance with law. To prove his case of receipt of monthly salary of Rs.13,000/- he has not produced any documents. Therefore, this



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Court considering the overall evidence, reasonably fix the monthly income of the husband as more than Rs.1,50,000/-. Further, he is a B.Tech graduate and he is in a fit physical condition to earn. It is relevant to note the moral obligation imposed by the 'Manu' imposes moral obligation to pay maintenance in the following words:

'The aged parents, a virtuous wife and an infant child must be maintained even by doing a hundred mis-deed'

The said moral obligation is transformed into statutory and constitution obligation to pay the proper maintenance to the wife and child.

12. Even though the husband took a stand that the wife is working in the private company and earned Rs.15,000/- per month, no evidence is adduced. Hence, mere pleading without evidence is not proof of fact. In this aspect, it is relevant to note that the judgment of the Hon'ble Supreme Court Judgment reported in the case of **Swapan Kumar Banerjee v. State of W.B., (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



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absence of any such evidence no presumption can be raised that the wife is earning sufficient amount to support herself.

13.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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14. This Court's view is that on the perusal of the available evidence, the grant of maintenance of Rs.8,600/- to the wife and children is not in accordance with the above guidelines. The learned trial Judge, without any statistics and guidelines, erroneously fixed the daily food expenditure of the wife is Rs.150/- per day. The learned trial judge failed to take judicial notice of cost of the essential commodities before arriving at the quantum of maintenance. We are seeing, the cost of living is continuously increasing every year. Even, the cost of one litre Milk is around Rs.45. In the said circumstances, this Court failed to understand on what basis the amount of Rs.150 was fixed by the learned trial Judge for the daily food expenditure of the wife. Further, the Hon'ble Supreme Court, emphasized while granting maintenance amount, it is the duty of the Court to consider the social status of the parties in their society and cost of living and grant reasonable maintenance amount. The quantum of maintenance granted by the learned trial Judge in the considered opinion of this Court is not in accordance with law and also proportionate to the present cost of living. Hence, this Court is inclined to increase the maintenance amount



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granted to the wife from Rs.5,100/- to Rs.8,500/- and to the child from Rs.3,500/- to Rs.8,500/-. Totally the maintenance amount granted by the Court below is enhanced to a sum of Rs.17,000/-.

15. In result, this court inclined to dismiss the revision petition filed by the husband and partly allowed the Revision filed by the wife by enhancing the maintenance amount granted to the wife from Rs.5,100/- to Rs.8,500/- and to the child from Rs.3,500/- to Rs.8,500/-. Totally the maintenance amount is Rs.17,000/-. The enhanced amount is liable to be paid from the date of judgment of this order.

16. Accordingly, the petition in Crl.R.C.(MD).No.800 of 2022 is partly allowed and the petition in Crl.R.C.(MD).No.803 of 2022 is dismissed. Consequently connected criminal miscellaneous petitions are also closed.

09.01.2024

NCC :Yes/No
Index :Yes/No
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To

1. The learned Family Judge,
Sivagangai.
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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