



CRL.R.C.(MD).No.793 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated: 18.04.2024

CORAM

THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN

Crl.R.C.(MD).No.793 of 2023

1.Jency

2.Minor.Shyam

3.Minor.Sherli

.. Petitioners

Vs.

Francis Raja
Respondent

...

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the order dated 19.06.2023 in M.C.No.4 of 2019 on the file of the Judicial Magistrate Court, Musiri and set aside the same in so far as quantum of the award amount and enhance the award of maintenance as Rs.2,500/- and allow the same.

For Petitioners : Mr.I.Velpradeep

For Respondent : Mr.Balasubramanian



CRL.R.C.(MD).No.793 of 2023

4. The respondent filed a counter denying the allegation made in the petition and specifically stated that the 1st petitioner made a false complaint against him and the same was closed. In view of the false complaint, he was forced to file I.D.O.P.No. 202 of 2019 before the Competent Court for the relief of divorce. He also stated that she also made false complaint against him regarding the mini bus registration certificate and route permit and hence, he is unable to earn any income as pleaded by the petitioner. Hence he seeks for dismissal of the petition.

5. To prove the claim the 1st petitioner examined herself as a PW1 and marked Ex.B1 and the respondent examined himself as RW1 and no document was marked on his side. The Learned Trial Judge considering the oral evidence, has passed the impugned order and directed the respondent to pay a monthly maintenance of Rs.2500/- to the 1st petitioner and Rs. 2500/- each to the 2nd and 3rd petitioners till their attainment of majority.

6. The wife without satisfying the quantum of maintenance awarded by the Learned Trial Judge has filed this revision seeking enhancement of maintenance. The Learned counsel for the petitioner submitted that the



CRL.R.C.(MD).No.793 of 2023

respondent was doing transport business and he admitted that he has shopping complex and he derived regular rental income from the said shop and there was no income for the 1st respondent and the 2nd and 3rd petitioners, who are pursuing crucial part of their higher studies and in that event award of maintenance of Rs.2500/- is not proportionate to the cost of the present day living and the other educational expenditure of the 2nd and 3rd petitioners. With the said meagre amount of Rs.2500/- it is not possible to keep the life going with dignity. Therefore, the award is not according to the Hon'ble Supreme Court judgment in the case of **Rajnesh Vs Neha** reported in **(2021) 2 SCC 324**. Therefore, he seeks the enhancement of the compensation.

7. The Learned counsel for the respondent submitted that there was a business loss and hence, he closed the shop and getting only minimum rental income and due to the complaint made by the petitioner relating to the RC book of the mini bus, he is unable to run the motor business and also there is no sufficient income from the said business. Therefore, the Learned Trial Judge considering the same granted the said amount.



CRL.R.C.(MD).No.793 of 2023

8.This Court considered the rival submission made on either side and perused the records.

9.Whether the petitioners are entitled to get enhanced maintenance amount?

10. The respondent admitted the marriage and paternity of the child and also admitted that he has filed the IDOP for divorce and the same is pending. Due to the matrimonial discord, the petitioner is living separately in a separate residence along with her two children. During the course of the cross examination the respondent admitted that he is running the transport business namely mini bus and also he admitted that he has a residential house and he also rented the said ground floor. He also further admitted that he has a shopping complex containing three shops and he rented the same. He also admitted that he never pleaded that the petitioner is working and earning salary and unaware whether the 1st petitioner worked in the Maruthi Enterprises after 2018. He also admitted that he never gave any amount towards the educational expenditure of the two children. The petitioner in her cross examination stated that she is living with pension income of her father and to meet out the expenditure she also



borrowed amount for interest. She also deposed that she is unaware of the sale of the two mini buses but knew sale of one bus. She also stated that she is not working. The learned trial judge without considering the above evidence of the husband awarded only Rs.2,500/- and in the considered opinion of this court the said award amount is highly inadequate. The Hon'ble Supreme Court in the case of **Rajnesh v. Neha**, reported in (2021) 2 SCC 324, has reiterated the principle to be followed in fixing the quantum which read as follows: :

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."*



11. The Hon'ble Two Judges bench of the Supreme Court in the case

of ***Bhuwan Mohan Singh v. Meena***, reported in **(2015) 6 SCC 353**:

2.Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to



see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.

12. The same was followed and affirmed by the Hon'ble Three Judges Bench of the Supreme Court in the case of **Reema Salkan Vs. Sumer Singh Salkan** reported in **2019 (12) SCC 303**, has held as follows:

The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where



WEB COPY



CRL.R.C.(MD).No.793 of 2023

the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life “dust unto dust”.

13. The petitioner specifically pleaded and deposed that the respondent is living lavishly with some other lady and filed the divorce petition against her and not even paid single pie towards the educational expenditure of the two children and hence the respondent also admitted that he did not pay any amount towards the educational expenditure of his children. In the said circumstances in order to enable the wife to overcome the financial crunch and to prevent the petitioner from being reduced to



CRL.R.C.(MD).No.793 of 2023

destitution and in advancement of social justice, this court by applying the above principle considering the living standard of husband and his family and inflation rate and high cost of living and the economic status of the both parties and considering that the 2nd and 3rd petitioners are in the crucial stage of education pursuing their higher studies, this court is inclined to enhance the amount from Rs.2500/- to Rs.7000/- to all the petitioners.

14. Accordingly, the revision is partly allowed in the following terms:

14.1.The maintenance award passed in the M.C.No. 4 of 2019 on the file of the Judicial Magistrate Court, Musiri is enhanced from Rs.2500/- to Rs.7000/- to all the respondents from the date of the filing the M.C.No. 4 of 2019.

14.2. The respondent is directed to pay the said enhanced amount within 2 months from the date of receipt of the copy of this order.

18.04.2024

Index : Yes / No
Internet : Yes / No
tta



WEB COPY



CRL.R.C.(MD).No.793 of 2023

To:

1. The Judicial Magistrate Court, Musiri.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



CRL.R.C.(MD).No.793 of 2023

K.K.RAMAKRISHNAN, J

tta

Crl.R.C.(MD).No.793 of 2023

18.04.2024