

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 09.07.2024

CORAM

THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN

CrI.R.C.(MD).No.996 of 2023
and
CrI.M.P(MD).No.12869 of 2023

P.Rajapandi

... Petitioner

Vs.

1.M.Deepa

2.Minor Kali Prakash

... Respondents

PRAYER: This Civil Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the entire records and set aside the order passed in M.C.No.70 of 2018 on the file of the Family Court, Madurai, dated 30.05.2023 and allow the Criminal Revision Case.

For Petitioner : Mr.C.Vakeeswaran

For Respondents : Mr.G.Karnan

ORDER

The husband has preferred this revision challenging the maintenance award of Rs.10,000/- to each respondent (wife and child) granted in M.C.No.70 of 2018, on the file of the Family Court, Madurai, dated 30.05.2023.

2.The 1st respondent has filed the M.C.No.70 of 2018 with the following averments:-

The petitioner married a 1st respondent on 15.05.2011. He was serving in the military. The 1st respondent had already completed B.A., B.Ed., degree. Since the date of the marriage, the petitioner and his family members were continuously harassing her by demanding more dowry. The petitioner did not even give her any money to attend the teacher eligibility test held at Chennai. On 24.11.2013 the 2nd respondent was born and the petitioner never bothered to take care of her. Therefore, she made a complaint to his higher officials and they advised him to live with her and he undertook to take her and live with her but he did not take her and once again driven her out from the matrimonial home. Thereafter, he took her and

started harassing. In the said circumstances at the intervention of the elders, he took her to his work place in Punjab. Subsequently, he was transferred to Jammu Kashmir. Hence, she lived in the native place of the petitioner. At that time, the petitioner's father harassed her sexually under the influence of alcohol. The petitioner did not heed to the same in spite of 1st respondent's complaints about the conduct of his father. This amounts to a harassment. In the said situation, the petitioner and family members on 12.12.2017 assaulted her and caused injuries. Therefore, she gave the complaint and started living separately. On 24.04.2018, she issued a legal notice and demanded divorce and maintenance. She stated that the petitioner was receiving Rs.68,540/- as a monthly salary and hence, he is liable to pay Rs. 10,000/- as a monthly maintenance to each respondent.

3. The petitioner has appeared and filed a counter with specific denial of the above allegation made in the petition. The 1st respondent and her family members asked him to live with her in her residence. They never allowed him to take her and child. They made a complaint on 21.04.2018 to the Sivagangai All Women Police Station and the same was closed as false and thereafter another complaint was given before the Manamadurai and the

same was referred to the social welfare officer and the same was found as false. He also deposited amount in the account of the 1st petitioner without any demand to meet her maintenance even before filing of the petition. During the pendency the petition he also handed over the jewels worth of Rs.3,92,000/-. He further stated that the 1st respondent insisted to purchase a house in her name to live with her. In the said circumstances he prayed to dismiss the petition.

4.The learned trial Judge after considering the evidence adduced on the side of the 1st respondent and the petitioner allowed the application by granting Rs.10,000/- as a monthly maintenance to each respondent by passing the impugned order. Challenging the same the petitioner has filed this revision case.

5. The learned counsel for the petitioner would submit that the 1st respondent herself voluntarily left the matrimonial home without any reasonable cause. He has taken all *bonafide* steps to live with her. But she sent a divorce notice and filed this maintenance petition. Therefore, he is not liable to pay maintenance. The learned trial Judge failed to consider the

same.

5.1.The learned counsel would further submit that the 1st 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 the learned trial Judge recorded the finding that the petitioner and the family member assaulted her and the proper police complaint was made and the same was investigated and final report was filed against the petitioner and his family members and the same was taken on file in C.C.No.8 of 2020, on the file of the learned Judicial Magistrate, Thiruppuvanam and hence, the learned trial Judge declined to accept the case of the petitioner that the 1st respondent left the matrimonial home without cause cannot be entertained and then granted maintenance. Hence, there is no reason to interfere with the same. He also further submitted that no evidence was adduced to prove the independent source of the 1st 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.

8. The relationship between the petitioner and the 1st respondent is not in dispute. There is also no dispute relating to the paternity of the 2nd respondent. The learned trial Judge found that there is serious allegation against the petitioner and his family members that they had assaulted her and caused injuries which resulted in filing of case and pendency of the criminal case in C.C.No.8 of 2020. Therefore, the argument of the learned counsel for the petitioner that the 1st respondent is living away without any reasonable cause cannot be accepted.

8.1.The petitioner has not adduced any evidence to prove the independent source of income of the 1st respondent to maintain herself and her child. Therefore, the petitioner has a duty to maintain her and the child.

8.2. It is admitted case of the petitioner that his monthly salary is Rs. 48,914/-. The learned trial Judge has considered the above aspect and correctly fixed the monthly maintenance of Rs.10,000/- to each 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 each respondent, considering the earning capacity of the first respondent and needs of the respondent 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. 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.”

8.3. Therefore, 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.

9. Accordingly, this Criminal Revision Case is dismissed and the order passed by the learned Judge, Family Court, Madurai in M.C.No.70 of 2018, dated 30.05.2023 is hereby confirmed. Consequently, the connected miscellaneous petition is closed.

10. As per the direction of this Court dated 12.09.2023, in CrI.M.P. (MD).No.12869 of 2023, in CrI.R.C.(MD).No.996 of 2023, the petitioner deposited the entire arrears of the maintenance pending as of now at the rate

of Rs.15,000/- before the trial Court. Therefore, the respondent is permitted to withdraw the deposited amount. The petitioner is directed to deposit the remaining amount, if any, within a period of one month from the date of receipt of a copy of this order.

09.07.2024

Index : Yes / No

Internet : Yes / No

tta/sbn

Note:Issue Order Copy On 07.11.2024.

To

1. The Family Court, Madurai.

Crl.R.C.(MD).No.996 of 2023

K.K.RAMAKRISHNAN, J

tta/sbn

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