



Crl.R.C.(MD).No.1239 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 20.12.2023
Pronounced On : 19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC.(MD).No.1239 of 2022
and
Crl.M.P.(MD).No.15589 of 2022

K.Rajini Narayanan

... Petitioner

Vs.

1.N.Sanmugapriya

2.Minor.R.S.Lakneswaran

... Respondents

(Minor through his mother and natural guardian herein the first respondent)

PRAYER : Petition filed under Section 397 r/w 104 of Cr.P.C., to call for records and set aside the order in M.C.No.27 of 2018 dated 29.10.2022 on the file of the Family Court, Srivilliputhur (Camp), Virudhunagar District.

For Petitioner :Mr.T.R.Subramanian

For Respondents :Mr.J.Barathan



Crl.R.C.(MD).No.1239 of 2022

WEB COPY

ORDER

The petitioner/husband of the first respondent has filed this case against the impugned maintenance award dated 29.10.2022 passed in M.C.No.27 of 2018, by the learned Judge, Family Court, Srivilliputhur, wherein the Court below directed to pay monthly maintenance of Rs. 10,000/- each to the respondents ie., his wife and his son.

2. The petitioner is the husband of the first respondent. They had entered into marriage on 12.09.2010. Out of their wedlock, the second respondent was born. Thereafter, due to some dispute between them, the first respondent/Wife has left the matrimonial home and is said to be living with her father. The first respondent filed the maintenance claim in M.C.No. 27 of 2018, on the file of the learned Judge, the Family Court, Srivilliputhur, with the following allegations:

2.1. The petitioner and the first respondent entered into marriage on 12.09.2010. Out of their marriage, the second respondent was born on 12.09.2014. Thereafter due to some dispute, she made allegations against



Crl.R.C.(MD).No.1239 of 2022

the petitioner regarding dowry demand etc. She has left the matrimonial home and is living with her father. The petitioner filed H.M.O.P.No.2 of 2017, for divorce and the same was dismissed on 07.06.2017. During pendency of the above H.M.O.P., proceedings, the learned trial Judge granted an interim maintenance of Rs.8,000/- by considering the cost of living and also the educational expenditure of the second respondent. The first respondent further has averred that the petitioner is working in Tata Consultancys Services as Software Engineer and earning a sum of Rs. 1,75,000/- per month. She further stated that the petitioner owns a house at Madurai, which fetches a sum of Rs.25,000/- as rental income and he has sufficient means to pay maintenance. It is further stated that her mother passed away long back and her father is also aged about 70 years. Therefore, she is duty bound to take care and protect her child and she is unable to attend any job in the interest and welfare of her Son. Hence, she claims monthly maintenance of Rs.20,000/-.

3. The learned counsel for the husband submitted that he filed a counter denying all the allegations made by the petitioner and specifically



Crl.R.C.(MD).No.1239 of 2022

WEB COPY

stated that he was regularly paying the monthly maintenance of Rs.8,000/- as per the order of the Family Court. He denied that he received a sum of Rs.1,75,000/- as monthly income as alleged by the first respondent. He specifically denied the averment that he is earning a sum of Rs.25,000/- by way of rent from a house. He further pleaded that his mother is suffering from various ailments and hence, he is duty bound to maintain her. Further, it is stated that his father suffered business loss and hence, there is a financial constraint in his family. He further takes a stand that the first respondent is a M-Tech graduate and without doing any job / work she is demanding the maintenance from the petitioner.

4. The learned trial Judge after considering the evidence of documents adduced on the side of both parties, has come to the conclusion that the petitioner is working as a Software Engineer and earning a sum of Rs.1,50,000/- as monthly salary, on the basis of the evidence of P.W.2, namely, the competent officer from the petitioner's office. The learned trial Judge also finds that due to the absence of any female member in the family of the first respondent, she has been taking care of the son and also taking



Crl.R.C.(MD).No.1239 of 2022

care of her age old father. According to the first respondent, her father is suffering from various ailments and hence she is not in a position to go for any job /work. In the said circumstances, the learned trial Judge has granted monthly maintenance of Rs.20,000/-, considering the cost of living as well as the educational expenditure prevailing as on date.

5. In the said circumstances, this Court does not find any merit in the submission of the learned counsel for the petitioner to interfere with the above findings made on the assessment of the documents and the oral evidence. More particularly, the finding of the learned trial Judge is without any perversity.

6. It is the duty of the husband to maintain his wife and his child. It is the specific case of the wife that the petitioner made a demand of dowry and caused harassment and the petitioner filed the H.M.O.P.No.2 of 2017 seeking divorce. Therefore, the respondent was unable to lead a peaceful life in the matrimonial home and because of the said reasonable cause, she left the matrimonial home and living with her parent. Therefore, there is a



Crl.R.C.(MD).No.1239 of 2022

bonafide reason, on the part of the first respondent to live separately.

7. The petitioner contended that the first respondent being a graduate without doing work, she is making a claim of maintenance which is not sustainable. The said plea of the petitioner is not acceptable one. The Hon'ble Supreme Court has repeatedly held that once, the marriage is accepted by the husband, it is the duty of the husband to maintain his wife till the subsequent remarriage of the wife. Hence, the husband namely the petitioner is duty bound to maintain the wife. The son is the son forever and he has not denied his parentage. Once marriage is consummated, the wife becomes the husband's family member, and the husband is duty-bound to maintain his wife and child. This moral obligation emanated from the following words of the Manu:-

“The aged parents, a virtuous wife and an infant child must be maintained even by committing a hundred misdeeds.”

The said moral obligation becomes statutory duty as per Section 125 Cr.P.C. It creates a legal obligation upon the husband to maintain his wife and the child.



Crl.R.C.(MD).No.1239 of 2022

WEB COPY

8. This Court has no reason to reject the plea of the first respondent that due to the absence of any of the female member, more particularly, her mother she is duty bound to give care and protection to her son by making her presence in the family, without doing any job/work. Therefore, in all aspects, the judgment of the Court below is well considered and there is no reason to interfere with the findings of the Court below.

9. The learned trial Judge has also taken into consideration the cost of living, cost of educational expenditure, status of the parties and other relevant circumstances and fixed the monthly maintenance of Rs.20,000/- to the respondents and also directed to deduct a sum of Rs.8,000/- which was granted in the earlier divorce proceedings. The said consideration of the learned trial Judge is in accordance with the following guidelines laid down by the Hon'ble Supreme Court in the case of ***Rajnish v. Neha***, reported in **(2021) 2 SCC 324** to determine the monthly maintenance:

“1. Status of the parties.

2. Reasonable wants of the claimant.



Crl.R.C.(MD).No.1239 of 2022

WEB COPY

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.”*

10. 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.20,000/- to the respondents considering the earning capacity of the petitioner, the income of the



Crl.R.C.(MD).No.1239 of 2022

petitioner and needs of the respondents and social economic status of the parties and present day cost of living and also directed to deduct the amount of Rs.8,000/- awarded in H.M.O.P.No.2 of 2017 as interim maintenance and this Court does not find any ground to differ with the findings of the learned trial Judge.

11. For all the above reasons, this Criminal Revision Case fails and the same stands dismissed. Consequently, connected miscellaneous petition stands closed.

19.03.2024

NCC :Yes/No

Index :Yes/No

Internet :Yes/No

sbm



WEB COPY



Crl.R.C.(MD).No.1239 of 2022

K.K.RAMAKRISHNAN, J.

sbn

Crl.RC.(MD).No.1239 of 2023

19.03.2024