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C.R.P.No.1826 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2024
PRONOUNCED ON : 09.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1826 of 2024
and
C.M.P.No.9656 of 2024

T.Paul Ebenezer

... Petitioner / Respondent

Vs.

1.A.Hepzibah
2.Jerome Eliezer,
3.Giftlin Elizabeth

... Respondents / Petitioners

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Fair and Decretal Order dated 13.02.2024 passed in I.A.No.1 of 2023 in I.D.O.P.No.2170 of 2020, on the file of 1st Additional Family Court, Chennai.

For Petitioner : Mr.V.Kannan
For Respondent : Ms.P.Banumathy

ORDER

Challenging the Fair and Decretal Order, dated 13.02.2024, passed in I.A.No.1 of 2023 in I.D.O.P.No.2170 of 2020, on the file of the 1st Additional Family Court, Chennai, the petitioner is before this Court with the present Revision



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2. Mr.V.Kannan, the learned counsel appearing for the petitioner/husband would submit that the marriage between the petitioner and the 1st respondent was solemnized at New Life Assembly of God Church situated at No.191, Mount Road, Little Mount, Chennai, as per Christian Rites and Customs. The marriage was arranged one and their marital life was so miserable from the beginning. The 1st respondent not respected the petitioner and his family members and not acted as a dutiful wife. The 1st respondent always made petty quarrel with the petitioner and she abused him with unparliamentary words. However, the petitioner showed love and affection on the 1st respondent. When the land was purchased in the year 2006, at that time the 1st respondent was working in a College on a consolidated basis. The petitioner worked as a Principal and Director of Adithya Vidhsyashram Hr.Sec. School, one of the school students' parent, who is a Government Doctor, helped them for purchase of the land at Puducherry. Due to love and affection, the 1st respondent's words only, the petitioner accepted to settle at Puducherry and built a house and registered in her name. The 1st respondent and the petitioner setup their family at Puducherry and there, they lived for 9 years. Due to love and affection, petitioner purchased the land in the name of his wife. The petitioner is not at all



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interested in occupying or deceiving the house at Mahaveer Nagar, as a husband he want to live peacefully after settling the debts. The petitioner contributed for construction of house. Because of his loyalty, the petitioner registered the land purchased at Puducherry in 1st respondent's name. For which, the petitioner spent more money for the construction of house. The petitioner nourished love and affection and educated their children until their graduation. The petitioner spent nearly Rs.8,00,000/- for his son's study at NIT, KARAIKAL, apart from that, he spent Rs.11,77,000/- for his children.

3. The learned counsel further submitted that the 1st respondent was working as lecturer on a consolidated pay between Rs.6,500/- to Rs. 10,000/- until 2010. However, the petitioner working as a Principal and Director in Aditya Vidyashram Hr.Sec. School, Puducherry and earning Rs.48,000/- per month during 2010 to 2012. The petitioner's son wanted a new Laptop worth about Rs.2,00,000/-, since petitioner already borrowed for his son's higher education, hence not in a position to fulfil son's request because of that only the problem arose between them. There is nothing more behind that. Apart from that, for Lawspet house, the petitioner borrowed loan Rs.1,50,000/-, for Furniture items Rs.68,000/-, Vehicle service, AC



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service, etc for Rs.40,000/- in overall Rs.22,77,000/-, as father the petitioner sent money to his children till December, 2020 even after filing of this case. There is no proof filed by the 1st respondent that she was paying money to her children Rs.60,000/- towards the expenses, the education and recreation cost only Rs.36,200/- p.m. From 2015, onwards 1st respondent not given single paise to run the family and all the expenditures borne out by the petitioner only. Whereas, the 1st respondent herself admitted in the counter in I.D.O.P. No.2319/2021 "the 1st respondent stopped giving her salary since 2017 to the petitioner, however, still spent all of it for the wellbeing of the family". The petitioner is not earning Rs.1,00,000/- p.m.. Whereas, the 1st respondent is working in the Govt. College from 2010 onwards and earning more than Rs.1,50,000/- p.m. No interim maintenance was granted to the daughter as the court said that she has attained majority. A daughter who attained majority and is still un married is not entitled to claim maintenance from her father, if she is not suffering from any physical or mental abnormality/injury.

4. The learned counsel for the petitioner further submitted that the impugned order makes a reference to Section 125(1)(b) of the Cr.P.C. where the maintenance can be granted to the minor children



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only and the major daughter cannot claim maintenance through her mother. Therefore, if a wife is working, she is still liable to contribute towards the maintenance of her child as per court orders. The petitioner paid an amount of Rs. 1,47,500/- & Rs.85,500/- respectively to the respondents 2 and 3 through RTGS/Gpay/Net Transfer sent through G-pay for Rs.1,500/- to both children, but at the same time, both the children returned the same to the petitioner via same mode. The 2nd respondent refused to meet the petitioner, when he visited Lyola College at Nungambakkam.

5. It is the contention of the petitioner that the petitioner filed I.D.O.P.No.2319 of 2021, for restitution of conjugal rights in which she categorically admitted that she was earning more than Rs.1,25,000/- per month as salary and the petitioner is earning far less amount than the 1st respondent. The learned I Additional Family Court Judge, Chennai, awarding maintenance to the 2nd and 3rd respondents is perverse. As per the decision in Aditi @ Mithi vs. Jitesh Sharma reported in 2024 CrI.L.J.769, it is the duty of the major children to make applications themselves claiming maintenance for them, if at all they have any right to claim and also to file concise application accompanied with affidavit of disclosure of Assets and



Liabilities. In this case, the respondents 2 and 3, who are majors, not made such an application. In the decision in Rajiv Modi vs. Sanjay Jain & Others reported in 2009 (2) LW CrI.364, the Family Court has no jurisdiction to entertain the maintenance petition in the absence of cause of action.

6. It is further contended that as per Section 125 Cr.P.C, there is no obligation on the father to maintain either his major son or his major daughter, but under Section 20(3) of Hindu Adoption and Maintenance Act, the father has a duty to maintain only his unmarried daughter till her marriage. But, under Christian law, there is no similar provision for maintenance of unmarried daughter. The 2nd and 3rd respondents are highly qualified and now the 2nd respondent is working at Chennai. Awarding maintenance of Rs.10,000/- per month to each of the 2nd and 3rd respondents are not maintainable in law and they are liable to be set aside.

7.Ms.P.Banumathy, the learned counsel appearing for the respondents would submit that the marriage between the 1st respondent and the petitioner was solemnized on 01.09.1997 in “New Life Assembly of God Church”, situated at No. 191, Mount Road, Little



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Mount, Chennai, as per Christian Rites and Customs Carriage. Out of their wedlock, two kids were born to them. The 1st respondent sent a legal Notice, dated 24.08.2020, to the petitioner for divorce. The petitioner sent a reply notice dated 14.09.2020 to the 1st respondent. The petitioner left the matrimonial home on 15.08.2020 to his native place at Chettikulam, Tirunelveli, without informing the respondents. From the date till now, the 1st respondent taking care of all the expenses for the children including food, accommodation, education and other needs.

8. The learned counsel further submitted that the 1st respondent spending nearly Rs.60,000/-p.m., towards expenses for the children, including education and recreation, which alone costs Rs.36,200/-pm. The petitioner is a Government servant earning about Rs. 12,00,000/- per annum. The 1st respondent is a Government servant and she can maintain herself. But, she reminds the petitioner that both have the bounden duty to maintain the children.

9. The Court heard the submissions made by the learned counsels appearing on either side and perused the materials available on record.



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10. It is not in dispute that the marriage between the 1st respondent and the petitioner was solemnized on 01.09.1997 in “New Life Assembly of God Church”, situated at No. 191, Mount Road, Little Mount, Chennai, as per Christian Rites and Customs Carriage. Out of their wedlock, two kids were born to them. The 1st respondent sent a legal Notice, dated 24.08.2020, to the petitioner for divorce. The petitioner sent a reply notice dated 14.09.2020 to the 1st respondent. The petitioner left the matrimonial home on 15.08.2020 to his native place at Chettikulam, Tirunelveli. The 1st respondent filed a Petition in IDOP.No.2170 of 2020, on the file of Family Court at Chennai, for divorce. The petitioner filed a petition in I.D.O.P.No.2319 of 2021 on the file of Family Court, Chennai, for restitution of Conjugal Rights. Further, the respondents filed an application in I.A.No.1 of 2023 in I.D.O.P.No.2170 of 2020, on the file of the learned I Additional Principal Judge, Family Court, Chennai, for interim maintenance. The said petition was allowed, directing the petitioner to pay a sum of Rs.10,000/- per month to the 2nd respondent and Rs.10,000/- per month to the 3rd respondent towards interim maintenance, from the date of petition till the disposal of I.D.O.P.No.2170 of 2020. Aggrieved over the same, the petitioner is before this Court with the



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present Revision.

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11. On perusal of the records it is seen that the 1st respondent working as Teacher in Tamil Nadu Government and earning Rs.1,00,000/- per month. The wife claims Rs.50,000/- per month towards interim maintenance to the 2nd and 3rd respondents. Admittedly, they respondents 2 and 3 are majors. According to the counsel for the petitioner, the 2nd and 3rd respondents are highly qualified and now the 2nd respondent is working at Chennai. The Supreme Court had the occasion to consider this question in the case of **Jagdish Jugtawat v. Manju Lata and Ors.** Reported in **(2002) 5 SCC 422)** in which it has been held as follows:--

“Applying the principle to the facts and circumstances of the case in hand, it is manifest that the right of a major girl for maintenance from parents after attaining majority till her marriage is recognized in Section 20(3) of the Hindu Adoptions and Maintenance Act. Therefore, no exception can be taken to the judgment/order passed by the learned single Judge for maintaining the order passed by the Family Court. which is based on a combined reading of Section 125 Cr.P.C., and Section 20(3) of the Hindu Adoption and Maintenance Act...” For the reasons afore stated we



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are of the view that on facts and in the circumstances of the case no interference with the impugned judgment/order of the High Court is called for."

12. Therefore, the law is well settled that unmarried daughter is entitled to maintenance under Section 125 Cr.P.C., until she gets married. The father is duty bound to maintain his unmarried daughter irrespective of her age, as long as she remains unmarried and unable to maintain herself. In view of the categorical finding of the Hon'ble Apex Court, this Court is of the considered view that the amount of Rs.10,000/- towards maintenance ordered by the 1st Additional Family Court, Chennai, to the 3rd respondent / Giftline Elizabeth, is hereby confirmed. As regards, an amount of Rs.10,000/- towards maintenance ordered by the 1st Additional Family Court, Chennai, to the 2nd respondent / Jerome Eliezer, is concerned, the Hon'ble Apex Court and this Court time and again held that a major is not entitled to claim maintenance, and as contended by the petitioner, he is well educated and working in Chennai, this Court is of the view that he is not entitled for maintenance and an amount of Rs.10,000/- towards maintenance ordered by the 1st Additional Family Court, Chennai, to is set aside.



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13. In the result, the Civil Revision Petition is allowed in part. Consequently, the connected miscellaneous petition is closed. No costs.

09.01.2025

Speaking Order/Non Speaking Order
Index : Yes/No
Internet : Yes

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To

The 1st Additional Family Court,
Chennai.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
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