



Crl.R.C.(MD)No.153 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.03.2025

Pronounced on : 09.04.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.153 of 2023

and

Crl.M.P.(MD)No.2174 of 2023

A.P.Arumuga Selvan

... Petitioner

Vs.

1.Revathi

2.Minor.Ponmetha

3.Minor.Ponharisaran

*(respondents 2 and 3 are minors and represented
through their Guardian/the first respondent herein)*

... Respondents

Prayer : This Criminal Revision Case filed under Sections 397 & 401 Cr.P.C., to call for records in M.C.No.20 of 2017 by the Judicial Magistrate, Tenkasi dated 22.12.2022 and set aside the same.

For Petitioner : Mr.D.Venkatesh

For R1 : Mr.D.Venkatachalam



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ORDER

The Criminal Revision is directed against the order made in M.C.No.20 of 2017 dated 22.12.2022 on the file of the Court of the Judicial Magistrate, Tenkasi, granting maintenance under Section 125 of the Code of Criminal Procedure.

2. The facts not in dispute are that the marriage between the petitioner and the first respondent was solemnized on 03.09.2008 and due to their wedlock, they were blessed with a son and a daughter/respondents 2 and 3 herein and that the petitioner was working in Abu Dhabi from 2013 onwards.

3. The case of the respondents is that the petitioner, while he was in native place, had married one Valarmathi, who was working in a supermarket at Abu Dhabi by suppressing the subsisting first marriage, that the petitioner, by informing the second marriage, had deserted the respondents, that when the same was questioned, the petitioner had abused the first respondent and caused criminal intimidation that he would kill the

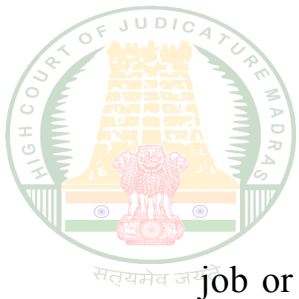


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respondents, that the first respondent is not having any job or means to take care of herself and her minor children, that the petitioner has been getting monthly salary of Rs.7 lakhs at Abu Dhabi and is also owning a school and house property worth about Rs.5 crores, that the petitioner has been receiving monthly income of more than Rs.5 lakhs from the school and Rs.2 lakhs from the ancestral agricultural lands and that therefore, the respondents were constrained to file the maintenance claim.

4. The defence of the petitioner is that the first respondent has caused cruelty both physically and mentally, that the first respondent has also lodged a false complaint and as a result of which, the petitioner has lost his job, that the petitioner had sent Rs.1,48,44,183/- to the first respondent's bank account for the period between 01.01.2013 and 03.07.2017, that the criminal case, which was instituted on the basis of the false complaint given by the first respondent, ended in petitioner's acquittal, that the petitioner has already filed a divorce petition and the same was pending on the file of the Principal Subordinate Court, Tenkasi, that the first respondent has filed the maintenance claim only to extract money by blackmailing the petitioner, that the petitioner is not having any



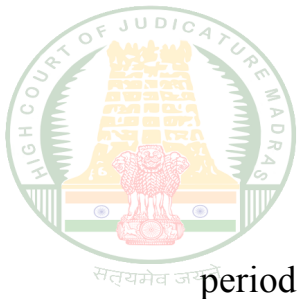
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job or any other means to maintain himself, that the first respondent has purchased properties from one Annathai vide sale deeds dated 30.03.2021 and that since the first respondent is having necessary means and properties to take care of themselves, the maintenance claim is liable to be dismissed.

5. During trial, the first respondent has examined herself as P.W.1 and exhibited 9 documents as Ex.P.1 to Ex.P.9. The petitioner has examined himself as R.W.1 and exhibited 7 documents as Ex.R.1 to Ex.R.7.

6. The learned Judicial Magistrate, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order dated 22.12.2022 granting monthly maintenance at Rs.12,000/- from 09.10.2017 to 31.12.2021 and Rs.15,000/- from 01.01.2022 to the first respondent and monthly maintenance at Rs.15,000/- each from 09.10.2017 to 31.12.2021 and Rs.20,000/- each from 01.01.2022 to the respondents 2 and 3 and also directed the petitioner to pay the arrears from the date of petition within a



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period of one month. Aggrieved by the said order granting maintenance, the husband has preferred the present revision.

7. It is not in dispute that the petitioner has filed the divorce petition in H.M.O.P.No.6 of 2018 and the same was pending on the file of the Principal Subordinate Court, Tenkasi and that pending divorce petition, the first respondent has filed an application under Section 24 of Hindu Marriage Act claiming monthly maintenance in I.A.No.2 of 2021 and the learned Principal Subordinate Judge, after enquiry, has passed an order dated 27.09.2022 directing the petitioner to pay monthly interim maintenance at Rs.5,000/- each to the respondents, totalling at Rs.15,000/- from the date of petition till the disposal of the divorce petition. It is also not in dispute that during the pendency of the revision, H.M.O.P.No.6 of 2018, after enquiry, came to be dismissed and an appeal challenging the dismissal of the HMOP is pending.

8. The learned counsel appearing for the petitioner would mainly contend that the learned Magistrate has failed to consider the maintenance awarded in the petition filed under Section 24 of Hindu Marriage Act, that

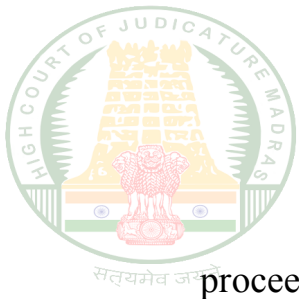


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the petitioner has been paying monthly interim maintenance at Rs.15,000/- as directed by the learned Principal Subordinate Judge and that the learned Magistrate, without considering the said maintenance, has mechanically ordered monthly maintenance at Rs.55,000/- without any basis. As rightly contended by the learned counsel appearing for the first respondent, just because another Court in another proceeding, has awarded maintenance, that by itself is not a ground to dismiss the subsequent maintenance claim.

9. The Hon'ble Supreme Court in ***Rajnish Vs. Neha and another*** reported in ***(2021) 2 SCC 324***, considering the issue of overlapping jurisdiction, has settled the legal position that where successive claims for maintenance are made by a party under different statutes, the relevant Court would consider an adjustment or set-off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding, that the applicants have to mandatorily disclose all the previous proceedings and the orders passed therein, in any subsequent proceeding and that if the order passed in the previous proceeding/s requires any modification or variation, the party would be required to move the concerned Court in the previous



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proceeding. Considering the dictum of the Hon'ble Apex Court, the present objection raised by the respondent is absolutely devoid of merits and the same is liable for rejection.

10. In the present case, as already pointed out, the learned Principal Subordinate Judge has granted interim maintenance at Rs.15,000/- for all the respondents till the disposal of the HMOP and that the HMOP has already been dismissed and even according to the petitioner's side, appeal preferred by him is pending. Since the divorce petition has already been disposed of, the interim maintenance order passed in I.A.No.2 of 2021 in H.M.O.P.No.6 of 2018 has already come to an end. It is not the case of the petitioner that the respondents have moved a similar application under Section 24 of Hindu Marriage Act before the appellate Court and obtained orders. No doubt, the learned Magistrate has not considered the amount of interim maintenance awarded by the Principal Subordinate Court. Since the divorce petition was already disposed of, the question of considering the interim maintenance, while considering the correctness of the quantum of compensation awarded by the learned Magistrate, does not arise at all.



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11. The learned counsel appearing for the petitioner would submit that the petitioner sent Rs.1,48,44,183/- through the first respondent's bank account during the period between 01.01.2013 and 03.07.2017 while he was in abroad, that the first respondent has purchased several properties in her name and that therefore the question of granting maintenance does not arise at all.

12. The learned counsel appearing for the first respondent would submit that the petitioner has filed a suit claiming ownership over the properties purchased by the first respondent in O.S.No.55 of 2018 and after trial, a decree was granted in his favour. The learned counsel appearing for the first respondent has produced the copy of the judgment passed in O.S.No.55 of 2018, wherein, it is evident that the petitioner has filed the suit to declare that the properties purchased by the first respondent are belonging to him and for permanent injunction restraining the first respondent from alienating or encumbering the suit properties and after full trial, the learned Additional Subordinate Judge, Tenkasi, has passed a judgment and decree dated 05.08.2024 granting the reliefs of declaration and permanent injunction as sought for by the petitioner. It is



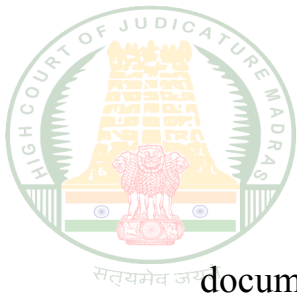
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pertinent to note that the petitioner has obtained the reliefs of declaration that the properties purchased by the first respondent are belonging to the petitioner and in that fact situation, the present contention of the petitioner, which is devoid of substance, is liable for rejection.

13. It is not in dispute that the respondents have filed a suit for partition against the petitioner and his siblings in O.S.No.196 of 2018 and the learned Additional District Judge (FTC), Tenkasi, after full trial, has passed a preliminary decree declaring that the respondents/plaintiffs are entitled to 2/12 shares in the 2nd scheduled properties and Item Nos.5 to 7 in the 3rd scheduled properties and also declared that the documents executed by the petitioner/first defendant and fourth defendant in favour of the third defendant as null and void.

14. The learned counsel appearing for the first respondent would submit that the petitioner, in order to evade from the payment of maintenance, has executed a sham and nominal documents in favour of his sister and that is why, the respondents were constrained to file the above suit and the learned Additional District Judge has specifically held that the



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documents executed by the petitioner along with the fourth defendant in favour of the third defendant are null and void.

15. The main grievances of the respondents is that while the marriage between the first respondent was subsisting, the petitioner has entered into second marriage with one Valarmathi and thereafter he deserted the respondents.

16. On the basis of the complaint lodged by the first respondent, case came to be registered in C.C.No.37 of 2018 and after trial, the petitioner was acquitted.

17. It is pertinent to note that the first respondent has produced the marriage registration certificate of the petitioner with the said Valarmathi and also examined the Sub Registrar and also produced the passport, wherein, the petitioner was shown as husband of the said Valarmathi. The learned Magistrate, considering the materials available on record, has come to a *prima facie* finding that the petitioner has entered into an another marriage with the said Valarmathi and thereby deserted the



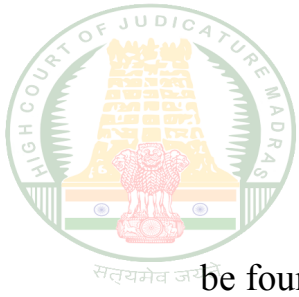
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respondents. Though the petitioner was alleging that the first marriage was not subsisting, he has not produced any iota of evidence to substantiate the same and as such, the finding of the learned Magistrate cannot be found fault with.

18. The learned Magistrate, taking note of the qualification of the petitioner and the quantum of income received by him earlier and the properties owned by him and taking note of the needs of the respondents, has fixed the monthly maintenance at Rs.15,000/- for the first respondent and Rs.20,000/- each for the respondents 2 and 3 from 01.01.2022 and also granted monthly maintenance at Rs.12,000/- for the first respondent and Rs.15,000/- each for the respondents 2 and 3 for the earlier period between 09.10.2017 and 31.12.2021.

19. Considering the entire materials available on records and also taking note of the fact that interim maintenance was awarded till the disposal of the divorce petition and the subsequent disposal of the divorce petition, the quantum of maintenance awarded by the learned Magistrate cannot said to be excessive and is reasonable and as such, the same cannot



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be found fault with. Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

20. In the result, this Criminal Revision Case stands dismissed.

Consequently, connected Miscellaneous Petition is closed. No costs.

09.04.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Judicial Magistrate,
Tenkasi.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
Crl.R.C.(MD)No.153 of 2023
and
Crl.M.P.(MD)No.2174 of 2023

Dated : 09.04.2025