

Crl.R.C.(MD).No.1036 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.04.2025

PRONOUNCED ON : 20.06.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1036 of 2022

and

Crl.M.P.(MD)No.13068 of 2022

Andrew Merwin

... Petitioner/Respondent

Vs.

1,Antony Jackline

2.Minor.Antony Mathew Michelin

represented by R.1 mother

(the first respondent herein)

: Respondents/petitioners

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of the Criminal Procedure Code to call for records relating to the order passed by the Chief Judicial Magistrate, Trichy, in M.C.No.50 of 2018, dated 18.05.2022 and set aside the same.

For Petitioner : Mr.C.Susikumar



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For Respondents : Mr.T.Lenin Kumar
(R.2 Minor)

ORDER

This Criminal Revision is directed against the order passed in M.C.No.50 of 2018, dated 18.05.2022, on the file of the Court of the Chief Judicial Magistrate, Trichirappalli awarding maintenance to the respondents.

2. The facts not in dispute are that the marriage between the petitioner and the first respondent was solemnised on 01.06.2014 at Ascension Church at Railway colony, Chennai as per the Christian rites and customs and due to their wedlock, they were blessed with a male child on 23.07.2015 – the second respondent herein and that subsequently there arose misunderstanding and issues between them and are living separately from 2016 onwards.

3. As usual in matrimonial proceedings, the petitioner as well as the first respondent have raised allegations and counter allegations against each other. The first respondent for herself and on behalf of her minor boy, made a maintenance claim under Section 125 Cr.P.C., alleging that the petitioner had deserted her and her minor son and that the petitioner has failed to maintain them. The petitioner filed a counter statement raising objections and disputing



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the petition averments. During trial, the first respondent examined herself as P.W.1 and exhibited 7 documents as Exs.P.1 to P.7. The petitioner examined himself as R.W.1 and exhibited 3 documents as Exs.R.1 to R.3. The learned Chief Judicial Magistrate, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned order dated 18.05.2022, directing the petitioner to pay monthly maintenance of Rs.10,000/- per month to the respondents each on or before 5th of every succeeding English calendar month from the date of petition. Aggrieved by the impugned order, the present revision came to be filed.

4. The learned Counsel for the petitioner would submit that the petitioner has always been ready and willing to live with the respondents, that the first respondent alone had wantonly withdrawn from the society of the petitioner, that since the petitioner's efforts for reunion ended in vain, he was constrained to file a petition in I.D.O.P.No.360 of 2019 claiming restitution of conjugal rights and the same is pending on the file of the Family Court, Chennai and that the learned Chief Judicial Magistrate, without considering the above aspects, has mechanically come to a decision that the petitioner was not willing to live with the first respondent.



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5. The learned counsel for respondents would submit that the petitioner took the first respondent to Delhi under compulsion, where they lived for 7 months. The first respondent returned to Chennai in May 2015 due to her pregnancy and gave birth to a male child on 22.07.2015. The petitioner later took them to Delhi in January 2016, despite the first respondent's objections to taking a 5-month-old child to such a climate. When the petitioner was transferred to Assam in May 2016, he sent the respondents to the first respondent's parents' home, allegedly unable to take them along. The first respondent was subjected to harassment and mental torture and the petitioner allegedly neglected and refused to maintain the respondent, failing in his duty to provide for them.

6. As already pointed out, the petitioner has filed a petition seeking restitution of conjugal rights and in that petition, has stated that after child birth, the first respondent went to her parental home and thereafter did not return back for more than a year, that the petitioner went to the first respondent's house in October 2016 to take back the respondents, but the first respondent's parents did not permit for the same and also not allowed the petitioner to see the child, that the petitioner's further attempt in February 2017 also ended in vain and that



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therefore, he was constrained to file the above petition for restitution of conjugal rights. But the first respondent in her claim petition has specifically stated that when their child was five months old, the petitioner had taken them to Delhi in January 2016 and were there till May 2016 and since there was a transfer to Assam, the respondents were sent to Chennai. As rightly contended by the learned Counsel for the respondents, the said factum was not at all disputed in the petition filed in I.D.O.P.No.360 of 2019.

7. As already pointed out, since the petitioner had taken a stand that the first respondent has not returned from her parental home from 2015 onwards. Admittedly, the petition for restitution of conjugal rights came to be filed in the year 2019 and that too during the pendency of the maintenance case. Though the petitioner has alleged that he had taken all efforts for reunion, he has not elaborated anything further and he has not produced any iota of evidence to substantiate the same. Considering the evidence available on record, the learned Magistrate has rightly come to a decision that the petitioner though filed a petition for restitution of conjugal rights, was really not ready and willing for reunion and that he had alone neglected the respondents.



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8. The learned counsel for the petitioner would submit that he has been contributing to the respondents' monthly expenses through their joint bank account and notably, the first respondent acknowledged receiving Rs. 7,00,000 from the petitioner for property purchase, although she spent a portion of it. The petitioner, with a monthly salary of Rs. 35,000, also supports his aged mother. Despite this, the Magistrate allegedly awarded maintenance mechanically, disregarding evidence and relying on assumptions.

9. The learned Counsel would further submit that directing the petitioner to pay more than half his salary to the respondents would severely impact his liability to support himself and his aged mother and that the learned trial Judge allegedly failed to consider the petitioner's financial constraints, rendering the quantum of compensation liable for revision.

10. The first respondent in her claim petition has specifically stated that the petitioner who is working in Indian Army is getting monthly salary of Rs.50,000/- and is having immovable properties and that therefore, he is having necessary capacity to pay the monthly maintenance amount at Rs.15,000/- to the

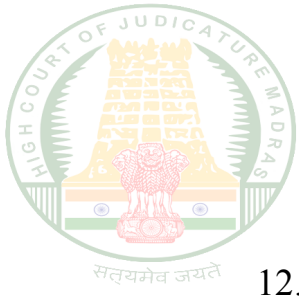


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first respondent and Rs.10,000/- to the second respondent. The petitioner in his counter statement has not specifically disputed his monthly salary. The petitioner in his counter statement has nowhere stated that he is only getting take home salary of Rs.35,000/- only. Moreover, the petitioner has not chosen to produce his salary certificate to substantiate his claim. It is not the case of the petitioner that the first respondent is working or is having necessary wherewithal to maintain them by herself.

11. Considering the facts and circumstances of the case, the status of the parties and the present economic scenerio, fixing of monthly maintenance at Rs.10,000/- for each of the respondents is very much reasonable and the same cannot said to be excessive. The revision petitioner has not canvassed any other reason or ground to impugn the order. Hence, this Court concludes that the Criminal Revision Case is devoid of merits and the same is liable to be dismissed.



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12. In the result, the Criminal Original Case is dismissed. Consequently,
the connected Miscellaneous Petition is also dismissed.

20.06.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No

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To

The Chief Judicial Magistrate Court, Trichy.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in

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