



Crl.R.C.(MD)No.1239 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.02.2025

Delivered on : 28.02.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1239 of 2023

Venkatesh

... Petitioner

Vs.

1.Jeevareka

2.Minor Janarthanan

... Respondents

PRAYER : Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C., to call for the entire records relating to the order of the learned Judicial Magistrate No.I, Sivakasi, dated 11.11.2022 in M.C.No.11 of 2017 and set aside the same.

For Petitioner : Mr.S.Ramasamy

For Respondents : Mr.R.Jothiraj

ORDER

The Criminal Revision is directed against the order passed in M.C. No.11 of 2017, dated 11.11.2022 on the file of the Court of the Judicial Magistrate No.I, Sivakasi, granting maintenance.

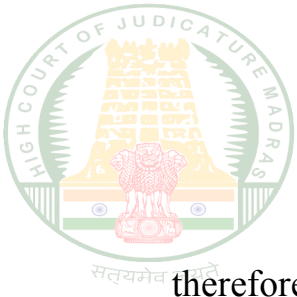


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2. It is not in dispute that the marriage between the petitioner and the first respondent was solemnized on 01.03.1998 as per Hindu Rites and Customs and due to their wedlock, they were blessed with a male child namely Janarthanan on 26.09.2001 and that subsequently, there arose misunderstanding between the couple and started living separately. It is also not in dispute that the first respondent/wife has filed a petition in H.M.O.P.No.8 of 2014, seeking divorce and the learned Subordinate Judge, Virudhunagar has granted divorce vide order, dated 27.03.2014. It is also not in dispute that subsequent to the divorce, the respondent has entered into second marriage and is living with her second wife.

3.The first respondent, by alleging that the petitioner/husband has deserted her and her child and was refusing to maintain them; that the first respondent is not having any job or income so as to maintain her and her child; that the first respondent is unable to manage the educational expenses of her minor son; that the petitioner is working as a conductor in the State Transport Corporation and is getting monthly salary at Rs.40,000/-; that the petitioner has also been receiving rental income at Rs.17,000/- and that



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therefore, the petitioner is liable to pay maintenance to the respondents, has laid the maintenance claim under Section 125 of the Code of Criminal Procedure for herself and on behalf of her minor son, the second respondent herein.

4.The petitioner has filed a counter statement disputing the paternity to the second respondent and further stated that the first respondent is having some affairs with one Ganeshkumar; that the first respondent at the instigation of the said Ganeshkumar has filed the divorce petition; that the first respondent along with her people has threatened the petitioner and imposed terms that the petitioner should not contest the divorce petition and he has to pay life time maintenance; that the petitioner has paid Rs.2,00,000/- as life time maintenance and decided not to contest the divorce petition and that the first respondent is doing business with the said Ganeshkumar and is having sufficient means to maintain herself and her minor son.

5.During enquiry, the first respondent has examined herself as P.W.1 and examined one staff attached with the Tamil Nadu State Transport Corporation, Virudhunagar Region as P.W.2 and exhibited five documents as



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Ex.P.1 to Ex.P.5. The petitioner has examined himself as R.W.1 and adduced no documentary evidence.

6. The learned Judge of the Family Court, by considering the pleadings of both the parties and evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned order, dated 11.11.2022, awarded monthly maintenance of Rs.10,000/- to the second respondent minor for the period from 01.03.2017 till he attains majority and at Rs.3,000/- per month for the first respondent and also directed to pay the arrears of maintenance amount within a period of three months. Aggrieved by the impugned order, the present revision came to be filed.

7.The learned counsel for the petitioner would mainly contend that the first respondent received a sum of Rs.2,00,000/- as lump sum towards lifetime maintenance and as such, she is not entitled to claim maintenance again. He would further submit that the trial Court failed to appreciate the fact that the considerable portion of the salary of the petitioner was spent to pay the loan amount to the bank and that the respondents have failed to prove the income of the petitioner through valid documents. He would



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further submit that the first respondent alone has voluntarily left the matrimonial home without prior intimation and that when her illegal affairs with Ganeshkumar was questioned, the first respondent neglected the petitioner and left the home on her own accord and that therefore, the respondents are not entitled to get maintenance from the petitioner.

8.The learned counsel for the respondents would submit that the though petitioner raised some grounds, has failed to prove the same and that since the petitioner himself has admitted that he is working as Conductor in the State Transport Corporation and is receiving a sum of Rs.40,000/- as salary, the learned Judge of Family Court has rightly granted the maintenance and there is absolutely nothing to interfere with the reasoned order of the Family Court.

9. As already pointed out, the first respondent has filed the divorce petition in H.M.O.P.No.8 of 2014 and divorce was granted on 27.03.2014. Though the petitioner has alleged that after filing of the divorce petition, he had paid Rs.2,00,000/- as life time settlement to the first respondent, he has not produced any iota of evidence to substantiate the same.



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10.No doubt, the petitioner in order to prove his defence with regard to the paternity of the second respondent has moved an application for DNA test in Cr.M.P.No.3491 of 2019 and the learned Judge has allowed the petition and appointed an Advocate Commissioner for the said purpose. But since the petitioner has not chosen to pay the Commissioner's remuneration and failed to take necessary steps, there was no further action.

11. The learned Judge, by referring to the birth certificate of the second respondent, by observing that the petitioner has not disputed the birth certificate or other school records of the second respondent showing himself as Father and that the petitioner has not taken specific stand that they were not having any intimate relationship in the year 2000 and also taking note of the presumption under Section 112 of Indian Evidence Act, has rightly rejected the defence of the petitioner that the second respondent is not his son.

12. Very recently, the Hon'ble Supreme Court in the case of ***Ivan Rathinam Vs. Milan Joseph*** reported in ***Live Law SC 118***, has specifically



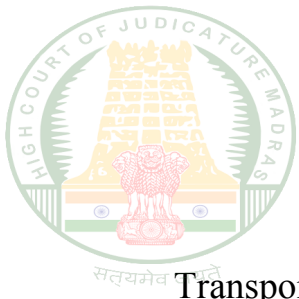
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held that a child's legitimacy determines paternity, emphasizing that a child born during a valid marriage is presumed to be the legitimate offspring of parents who had access to each other at the time of conception. The Hon'ble Apex Court has reiterated the legal principle that legitimacy presumes paternity unless conclusively rebutted by proving non-access between spouses and mere allegations of adultery or simultaneous access are insufficient to rebut the presumption and the relevant passage is extracted herein :

“The language of the provision (S. 112 of Evidence Act) makes it abundantly clear that there exists a strong presumption that the husband is the father of the child borne by his wife during the subsistence of their marriage. This section provides that conclusive proof of legitimacy is equivalent to paternity. The object of this principle is to prevent any unwarranted enquiry into the parentage of a child. Since the presumption is in favour of legitimacy, the burden is cast upon the person who asserts 'illegitimacy' to prove it only through 'non-access.'”, the Court said.”

13.Considering the above, the finding of the trial Court cannot be found fault with. As already pointed out, the first respondent has summoned and examined Office Superintendent attached with the Tamil Nadu State



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Transport Corporation, Virudhunagar Region and through him exhibited pay certificate of the petitioner as Ex.P.5 and whereunder, it is evident that the petitioner has been receiving Rs.32,407/- after deductions. Moreover, as rightly pointed out by the learned counsel for the respondents, the petitioner himself in cross examination would admit that he is receiving salary of Rs.40,000/-.

14.As rightly contended by the learned counsel for the respondents, the petitioner cannot be allowed to say that the considerable portion of the salary was spent to pay the loan amount to the bank, as the respondents are nothing to do with the loan amount due by the petitioner. It is pertinent to mention that when the revision was moved along with stay application, this Court has granted interim stay on condition that the petitioner shall deposit 50% of the arrears amount of maintenance pending at that time to the credit in M.C.No.11 of 2017 on the file of the learned Judicial Magistrate No.I, Sivakasi within a period of six weeks from the date of receipt of copy of that order, failing which, interim stay granted shall stand vacated automatically.



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15. The learned counsel for the petitioner would submit that the petitioner has not complied with the directions of this Court. Though the revision is pending from 2023, the petitioner has not chosen to get any extension orders, nor paid any amount to the respondents.

16. The Hon'ble Supreme Court has again and again reaffirmed their stand that it is the *sine qua non* duty of the husband to provide financial support to his wife and minor children. In the present case, as already pointed out, the petitioner has purposely failed to pay any amount to the respondents and thereby violated the orders of this Court.

17. Considering the facts and circumstances of the case and taking note of the fact that the petitioner is working as a conductor in the State Transport Corporation and is getting monthly salary of Rs.40,000/-, the amount awarded by the learned Magistrate cannot said to be excessive, but reasonable. Hence, this Court concludes that the impugned order is perfectly in order and the same cannot be found fault with and that therefore, the revision, which is devoid of merits, is liable to be dismissed.



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18.In the result, the Criminal Revision Case is dismissed.

28.02.2025

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

To

1.The Judicial Magistrate No.I,
Sivakasi.



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K.MURALI SHANKAR,J.

das

Order made in
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Dated: 28.02.2025