

**1.Arul Selvi Vs. Sathish Kumar**

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**Court :** Chennai

**Decided On :** Sep-14-2015

**Judge :** The Honourable Mrs.Justice S.Vimala

**Appellant :** 1.Arul Selvi

**Respondent :** Sathish Kumar

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 14.09.2015 CORAM THE HONOURABLE MRS.JUSTICE S.VIMALA Crl.R.C.(MD)No.470 of 2013 1.Arul Selvi 2.Minor Dinesh Kumar (Minor is represented by his mother, the fiRs.respondent herein)..Petitioners -versus Sathish Kumar ..Respondent Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, against the order dated 31.10.2012 made in Crl.R.C.No.29 of 2012 passed by the Principal District and Sessions Judge, Thoothukudi, modifying the order dated 18.07.2012 made in M.C.No.28 of 2010 on the file of the Chief Judicial Magistrate, Thoothukudi.

!For petitioners : Mr.G.R.Swaminathan ^For respondent : Mr.S.Dheenadayalan :

**ORDER**

The fiRs.and second petitioneRs.who are the wife and minor son of the respondent, filed a petition under Section 125 Cr.P.C., before the Judicial Magistrate, Thoothukudi, claiming a sum of Rs.5,000/- per month as maintenance

to each of them, totalling a sum of Rs.10,000/-.

2.It was the case of the wife that the respondent, despite having sufficient means, neglected and refused to maintain them even though they are entitled to be maintained by the respondent.

3.While considering the question of neglect, the Trial Court gave a finding that there is no justification for the husband to refuse to maintain petitioneRs.3.1.So far as the capacity of the husband to pay maintenance is concerned, the finding is that the documents proved that the respondent is running a business in the name of J.V.Medicals and therefore, the husband is having sufficient means to maintain the petitioneRs.3.2.The Court has also given a finding that there was no proof to show that the wife was able to maintain herself.

3.3.Considering the escalation in prices and the cost of education, the Court has ordered only Rs.3,000/- per month to each of the petitioners herein.

4.This order was challenged by the husband before the Principal District and Sessions Court, Thoothukudi.

The District Court reduced the amount of maintenance from Rs.3,000/- to Rs.1,000/- to each of them.

4.1.While considering the revision petition, the District Court gave a finding that the income earned by the husband through the medical shop has not been proved through any document and therefore, there is justification for reduction of the amount of maintenance.

This order is under challenge by the wife and the minor child in the present revision petition.

5.It is the case of the revision petitioners that because of the inflationary trend in economy, the amount as ordered by the Trial Court itself was not sufficient and therefore the District Court ought not to have reduced the maintenance from Rs.3,000/- to Rs.1,000/-.

5.1. On the other hand, it is the contention of the learned counsel for the respondent/husband that he is not at all the owner of the medical shop and he is only an employee working in a private company and therefore, the order of maintenance as passed by the District Court is fair and reasonable and not that of the order of the Trial Court.

6. Admittedly, the second petitioner-Dinesh Kumar is studying in third Standard.

The contention that the husband was not the owner of the medical shop was taken before the Trial Court also.

The Court relied upon Ex.P3- photographs as well as the receipt showing the purchase of medicines, which were purchased from the shop of J.V.Medicals, and came to the conclusion that J.V.Medicals is run by the respondent herein.

When such a finding is given, if it is not the shop of the respondent, it is not difficult for him to examine the owner of the shop or anybody connected with the shop to show in whose name the said medical shop stands and in whose name the license has been granted to run the shop.

It has not been done.

Unfortunately, a finding has rendered by the District Court that the respondent is not proved to be the owner of the shop.

As the owner of the shop, or as a person being employed in that shop, it is easy for him to produce details regarding the income derived in running the shop.

But the same has not been done.

7. The Revisional Court, without applying the correct principles of law and procedure, has reduced the quantum of maintenance from Rs.3,000/- to Rs.1,000/- each.

The Trial Court has ordered only minimum amount that is payable to the wife and child.

It is not possible to have hand-to-mouth existence.

8.The duty to prove the income is only upon the husband, as contemplated under Section 106 of the Evidence Act.

The Calcutta High Court, in the case of Mosammat Mamuda Bibi vs Sk.

Maniruddin @ Monirul And Anr.

on 23 March, 2005 (Equivalent citations: 2005 (3) CHN62 held as follows: ¶.11.

It is well-settled that the husband has the duty to prove his own income and in view of provisions of Section 106 of the Evidence Act, the burden of proof is on the husband as it is within his special knowledge regarding his income.

The wife's case was that the husband runs a Nursing Home under the name and style 'Orient Nursing Home'.

and that the husband is the quack doctor and very popular doctor in that area and earns more than Rs.2 lakhs per month.

On the other hand, the husband took the plea that he is a confirmed unemployed person and works sometimes in a Nursing Home and earns hardly Rs.1000/- to Rs.1500/- per month.

The wife could not produce relevant papers and documents before the Trial Court to prove the exact or probable income of the husband, but at the same time the husband also did not produce any paper and document to show his actual or probable income per month or annually.

On a consideration of evidence of both parties and considering that this quasi civil proceeding, the preponderance of probabilities would be in favour of the evidence of the wife.

Moreover, the decisions of this Court reported in Chandana Guha Roy (supra) and in Sushil Mondal v.

Shibdas Patra, reported in 2005(1) C Cr.

LR (Cal) 150, established that the burden of proof was on the husband to disclose his income as it was within his special knowledge in view of provisions of Section 106 of the Evidence Act.

Considering the evidence of the parties I am of opinion that, the husband Sk.

Maniruddin is a solvent person, rather a rich person, and his monthly income is not less than Rs.40,000/- per month otherwise, he could not have constructed a three-storied building to run a Nursing Home.?.

9. Therefore, it is clear that the husband neglected and refused to prove his income only for the purpose of suppressing his income in order to avoid payment of maintenance.

10. In such circumstances, the order passed by the Revisional Court is liable to be set aside and accordingly it is set aside and the order passed by the Trial Court is restored.

11. In the result, the revision petition filed by the wife and child is allowed with costs, setting aside the order passed by the Revisional Court and thereby confirming the order dated 18.07.2012 made in M.C.No.28 of 2010 on the file of the Chief Judicial Magistrate, Thoothukudi.

To 1. The Principal District and Sessions Judge, Thoothukudi.

2. The Chief Judicial Magistrate, Thoothukudi.

3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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