

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-06-2015

Coram:

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No. 1123 of 2009
and
M.P. No. 1 of 2009

Sakthivelu @ Ramesh .. Petitioner

Versus

1. Dhatchayani @ Thamizh

2. Ramprasath (minor) .. Respondents

Criminal Revision Case filed under Section 397 read with Sec. 401 of Cr.P.C. against the order dated 13.03.2008 passed in M.C. No. 6 of 2007 on the file of the Court of the Family Court, Puducherry.

For Petitioner : Mr. M. Navin
for Mr. T.P. Manohar
For Respondents : Mr. V. Lakshminarayanan

ORDER

This Criminal Revision Case is filed by the petitioner/husband questioning the correctness of the quantum of maintenance ordered by the Judge, Family Court, Puducherry, in M.C. No. 6 of 2007, dated 13.03.2008. By the said order, the Court below allowed the Maintenance Case filed by the petitioners/wife & son by directing the respondent/husband to pay maintenance at the rate of Rs.3,500/- per month to the first petitioner/wife and Rs.2000/- per month to the second petitioner/son, from the date of petition and the respondent is further directed to continue to pay the maintenance until further orders, on or before 5th of every English Calendar month and also to pay the arrears.

2. Mr.M. Navin, learned counsel appearing for the petitioner vehemently contended that the first respondent/wife herself quarreled with the petitioner/husband and left his house and he is living with her parents from the year 1997. He further contended that she demanded separate residence by leaving his parents and that she does not respect his elders in the family and she used to fight in the streets and defame his family in that area. He would further add that the respondent is also working in a private company and is earning and that her father is a landlord and that she is well settled. The only point which has been raised by the revision petitioner is, the Lower Court has failed to take into consideration, the actual amount received, as no supportive documents have been produced. It is only based on the assumption the amount has been fixed. Learned counsel for the respondent would contend that though he has produced the pay slip and his employer was examined as a witness, the defence of the revision petitioner has not been properly considered by the court below. Therefore, the

maintenance amount ordered by the court below is excessive and hence this Criminal Revision Case is filed.

3. Mr. V. Lakshminarayan, appearing on behalf of the respondents, would mainly contend that the petitioner had deserted her and the child and that at the time of trial the child was nine years and now studying 12th standard and he has to be taken care of. Therefore, the award of the Lower Court is correct and reasonable and need not be interfered with.

4. I heard the counsel for both sides and also perused the materials available on record. By consent, the main Criminal Revision Case itself is taken up for final disposal.

5. On a perusal of the materials available on record, it is seen that the marriage between the petitioner/husband and the first respondent/wife took place on 18.05.1997. The second respondent son was born on 03.07.1998. In the year 1998 itself, the revision petitioner filed a divorce petition in MOP No. 99/98 challenging the paternity of the 2nd respondent but the same was withdrawn. Again he filed a divorce petition in M.O.P.No.133 of 2001 since the first respondent refused to come and live with the petitioner. The first respondent/wife filed MOP No.48 of 2002 for restitution of conjugal, which was allowed and the revision petitioner/ husband was directed to pay a maintenance of Rs.2000/- to the petitioners. And again, on the ground of change of circumstances, M.C. No.6/2007 was filed by the first respondent/ wife, wherein the Judge, Family Court, Puducherry, in M.C. No. 6 of 2007, dated 13.03.2008, allowed the Maintenance Case filed by the petitioners/wife & son, directed the petitioner/husband to pay maintenance at the rate of Rs.3,500/- per month to the first petitioner/wife and Rs.2000/- per month to the second petitioner/son, from the date of petition and the respondent is further directed to continue to pay the maintenance until further orders, on or before 5th of every English Calendar month and also to pay the arrears. Aggrieved against the same, the present Criminal Revision Case is filed by the husband.

6. From the facts and circumstances enumerated above, it is seen that the petitioner/husband and the respondents are living separately from the year 1977. The only point raised in this revision, though there was evidence in the form of pay slip and it has been rightly pointed out by the officials, it cannot be totally construed as the basis for fixing the income. The petitioner also has not produced any evidence to show that the respondent/ wife has larger income, as claimed by him. Further more, it is seen that the first respondent/wife during the cross-examination has admitted before the Lower Court that she is working in a private concern, but, is earning only a meagre salary, therefore, now the question of correctness of the quantum of maintenance awarded by the Lower Court has to be decided by this Court. As far as the quantum of maintenance is concerned, the Court below, taking into consideration the evidence available on record has awarded maintenance at the rate of Rs.3,500/- per month to the first petitioner/wife and Rs.2000/- per month to the second petitioner/son, a total sum of Rs.5,500/- to both the respondents, this according to the petitioner/husband is very high. On the other hand, the learned counsel appearing for the

respondent/ wife would contend that the quantum of maintenance awarded by the Lower Court is correct and it needs no interference at the hands of this Court.

7. In this case, admittedly, a sum of Rs.3,500/- per month to the first petitioner/wife and Rs.2000/- per month to the second petitioner/son, has been awarded as maintenance by the Lower Court. Taking into consideration, the period of litigation between the parties and the son is studying, definitely Rs.3000/- per month is reasonable. But, at the same time the petitioner submitted that the wife is having separate income and she is not entitled to that sum and so quantum can be reduced from Rs.3500/- to 2000/- making a total of Rs.4000/-. Therefore, in my considered opinion, the first respondent/wife shall be paid a sum of Rs.2000/- but the second respondent/ son, doing his schooling, must be paid a sum of Rs.3,000/- per month as maintenance. So far as arrears is concerned, learned counsel for the petitioner seeks some reduction. Therefore, as far as the wife is concerned, the arrears of the reduced amount at the rate of Rs.2000/- calculated from the date of filing of the petition, shall be paid by the petitioner and the enhanced amount of Rs.3000/- to the son should be given effect from this month onwards, but the arrears for the son will be paid as per the order, at the rate of Rs.2000/- per month from the date of petition.

8. In the result, this Criminal Revision Case is partly allowed and the order dated 13.03.2008 passed in M.C. No. 6 of 2007 by the learned Family Court Judge, Puducherry, is modified to the extent that the first respondent/wife shall be paid a sum of Rs.2000/- and the second respondent/ son be paid a sum of Rs.3,000/- per month. The revision petitioner/ husband is directed to pay the reduced maintenance amount of wife of Rs.2,000/- per month from the date of petition till date and the son/ 2nd respondent shall be paid the enhanced amount from this month onwards. The petitioner/husband is further directed to continue to pay the revised maintenance amount to the respondents, on or before 5th of every succeeding English Calendar month. Consequently, the connected M.P is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

avr

To

The Family Court,
Puducherry.

1 cc to Mr. V.Raghavachari, Advocate Sr.No.29887

1 cc to Mr. T.P.Manoharan, Advocate Sr.No.29892

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