

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.891 of 2008

and

M.P.No.1 of 2008

and

M.P.No.2 of 2009

V.Maniyan ... Petitioner/Respondent

vs

Saraswathi ... Respondent/Petitioner

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the judgment dated 04.04.2008 passed by the learned District Munsif cum Judicial Magistrate, Kodumudi in M.C.No.2 of 2007.

For Petitioner : No appearance
For Respondent : Mr.M.Md.Ibrahim Ali

ORDER

The petitioner has come forward with this Criminal Revision case as against the order dated 04.04.2008 passed by the learned District Munsif cum Judicial Magistrate, Kodumudi in M.C.No.2 of 2007.

2. The brief facts of the case is as follows:

The respondent/wife filed a petition under Section 125 of the Criminal Procedure Code claiming maintenance from the petitioner/husband in a sum of Rs.3,000/- per month. The Court below ordered the said petition by awarding a sum of Rs.1,500/- per month payable by the petitioner/husband to the respondent/wife. Challenging the same, the present revision is filed.

3. According to the petitioner/husband, the respondent/wife has voluntarily left the matrimonial home; hence, she is not entitled to any maintenance. Moreover, it is stated that the petitioner is a handicapped person and he cannot live alone. It is further stated that he is drawing only a sum of Rs.6,000/- per month and out of the said sum, it may not be possible for him to pay a sum of Rs.1,500/- per month as maintenance to the respondent/wife. However, the Court below without taking into consideration all these facts, has ordered maintenance. Accordingly, prayed for setting aside the same.

4. Learned Counsel for the respondent/wife would submit that since the respondent was deserted by the petitioner, she is living separately. He would further state that the only daughter born to them, out of their wedlock has already been given in marriage. Even the sum of Rs.1,500/- per month ordered by the Court below is very meagre.

5. It is also submitted that during the pendency of the revision, as per the interim order passed by this Court, the petitioner/husband is paying only a sum of Rs.750/- per month and as she is not living with him, she is entitled to maintenance. Accordingly, the learned counsel for the respondent would pray for dismissing the criminal revision case.

6. In spite of giving several opportunities to the petitioner, when the matter is taken up today, the petitioner neither appeared in person nor through a counsel. Hence, the case is taken up on merits as per the decision of the Hon'ble Apex Court reported in (2013)3 SCC 721 [K.S.Panduranga vs. State of Karnataka]. Whereas the learned counsel for the respondent/wife is present and argued the matter.

7. Heard the learned counsel appearing for the respondent and perused the materials available on record.

8. The only point raised by the petitioner before this Court in this Criminal Revision Case is that the petitioner, who was working as a Record Clerk in Erode Central Library, has now retired and he is not able to pay the maintenance amount as ordered by the Court below. Moreover, the respondent/wife voluntarily left the matrimonial home. However, on a perusal of the judgment passed by the Court below as well as the materials available on record, it is seen that the petitioner is earning a sum of Rs.8,000/- per month. Hence, the Court below after deducting 1/3 rd amount towards his personal expenses and 1/3 rd amount to look after him, as he is a handicapped person, ordered to pay a sum of Rs.1,500/- per month to the respondent/wife. But now, the learned counsel for the respondent admits that the petitioner has retired from service and he will be getting only half the amount as pension. Even otherwise the reasons stated by the respondent that she is living separately because the petitioner is living with another woman cannot be accepted. It is also seen that the only daughter born to them has been given in marriage and she is living separately.

9. For all the above stated reasons and having regard to the cost of living index the amount of Rs.1,500/- ordered by the Court below is very meagre. Therefore, I do not find any reason to interfere with the reasoned order passed by the Court below.

10. It is also seen that during the pendency of this revision, the petitioner was paying a sum of Rs.750/- per month to the respondent, as per the interim order passed by this Court dated 01.07.2008. Further the petitioner has also deposited a sum of Rs.10,000/- [Rupees ten thousand only] towards 50% of the arrears and the same is also withdrawn by the respondent vide order of this Court dated 16.04.2009.

11. Therefore, the order passed by the Court below is confirmed, however, with a slight modification to the effect that as for the payment of arrears from April 2008 till May 2015 is concerned, instead of paying a sum of Rs.1,500/- per month, the payment of Rs.750/- made by the petitioner will suffice. The respondent/wife is not entitled to claim any payment of arrears. However, from June 2015 onwards, the petitioner/husband is directed to pay at the rate

of Rs.1,500/- [Rupees one thousand five hundred only] per month as ordered by the Court below to the respondent/wife on or before 5th of every succeeding English Calendar month.

12. With the above observation, this Criminal Revision Case is partly allowed to the above extent. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

vj2

To

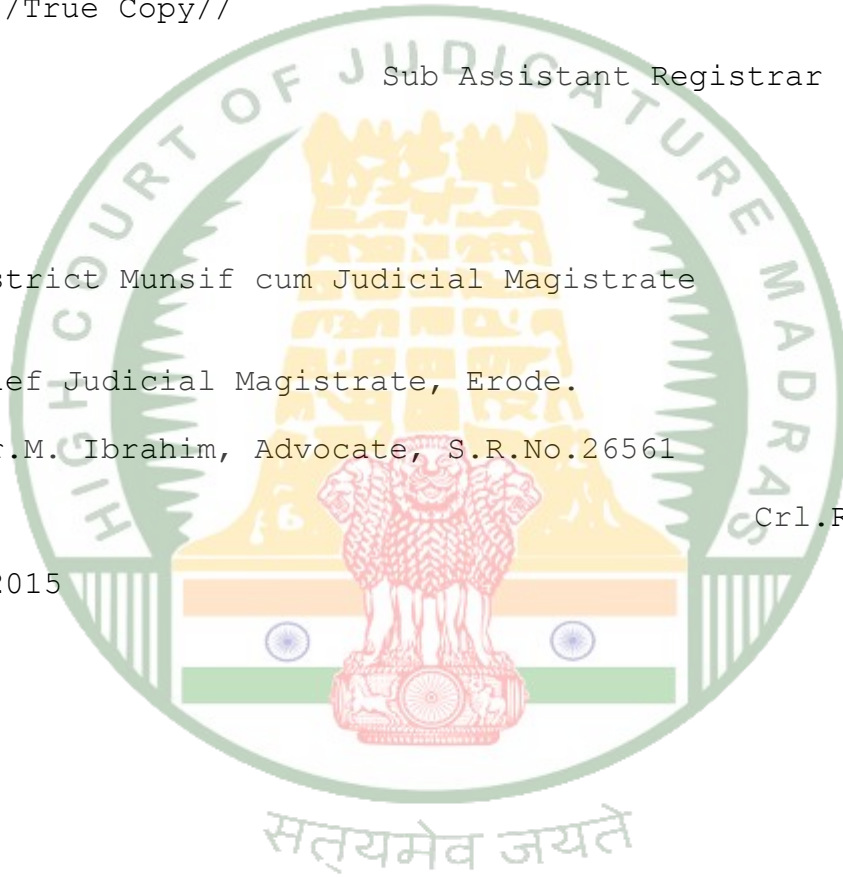
1. The District Munsif cum Judicial Magistrate
Kodumudi.

2. The Chief Judicial Magistrate, Erode.

+1cc to Mr.M.Ibrahim, Advocate, S.R.No.26561

SKV(CO)
Eu 29.06.2015

Crl.RC.No.891 of 2008



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