

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-07-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 893 of 2013

Janakiraman

.. Petitioner/Respondent

Versus

Sumathi

... Respondent/Petitioner

Criminal Revision Case filed under Sections 397 read with Sec. 401 of Cr.P.C. to set aside the Order dated 18.04.2013 made in M.C. No. 23 of 2011 on the file of the Chief Judicial Magistrate, Nagapattinam

For Petitioner : Mr. S. Panneerselvan

For Respondent : Mr. R. Murugabharathi

ORDER

The petitioner has come forward with this Criminal Revision Case aggrieved by the order dated 18.04.2013 passed in M.C. No. 23 of 2011 by the learned Chief Judicial Magistrate, Nagapattinam whereby the petition filed by the wife/respondent herein under Section 125 of Cr.P.C. was allowed directing the revision petitioner to pay Rs.9,500/- per month as maintenance to the wife/respondent besides a sum of Rs.7,500/- towards litigation expenses.

2. The learned counsel for the revision petitioner would contend that the revision petitioner has lost his job in which he was employed and at present he is working as a driver for a call taxi firm. It is also submitted that the revision petitioner has filed HMOP No. 95 of 2009 before the Sub Court, Ponneri. Subsequently, the respondent filed Transfer Civil Miscellaneous Petition before this Court and as per the order passed therein, HMOP No. 95 of 2009 filed by the revision petitioner was transferred and re-numbered as HMOP No. 74 of 2010 on the file of Subordinate Judge, Nagapattinam to be tried along with the petition filed by the respondent herein for restitution of conjugal rights. When that be so, the court below ought to have directed the parties to agitate their rights in the above said proceedings instead of ordering maintenance. It is further stated that the revision petitioner has aged parents to be taken care of and therefore also the amount of Rs.9,500/- ordered to be paid by the trial court towards maintenance for the

wife/respondent is excessive and onerous.

3. The learned counsel for the respondent wife would contend that she has no resource to maintain herself and she is depending upon her parents for her day to day expenses. The petitioner is earning not less than Rs.40,000/- per month in a private company and the allegation that he lost his job is untrue. The respondent is taking shelter in her parents home since April 2009 and from that date, the revision petitioner did not pay any amount towards her maintenance. The respondent is not gainfully employed anywhere and therefore, the court below has rightly taken into consideration the resourcefulness of the petitioner to maintain the respondent by awarding a sum of Rs.9,500/- per month.

4. I heard the learned counsel for both sides and perused the material records placed. It is submitted by the learned counsel for the revision petitioner that the revision petitioner has lost his employment in the private company where he was hitherto employed and presently he is working as a Driver in a Call Taxi firm. It is also further stated that the revision petitioner has filed HMOP No. 74 of 2010 pending on the file of Subordinate Judge, Nagapattinam where the wife/respondent also filed a petition for restitution of conjugal rights. Therefore, according to the counsel for the revision petitioner, the court below ought not to have awarded maintenance. In any event, the amount of Rs.9,500/- awarded towards maintenance is excessive and onerous. This submission of the counsel for the petitioner cannot be accepted. The pendency of HMOP No. 74 of 2010 filed by the revision petitioner or the petition filed by the wife for restitution of conjugal rights has nothing to do with the award of maintenance. Admittedly, the wife/respondent is residing separately from April 2009 and therefore, the revision petitioner is bound to pay some amount towards her maintenance. The court below, taking into consideration the admitted salary of the revision petitioner at Rs.28,500/- per month awarded only 1/3rd amount towards maintenance which works out to Rs.9,500/- besides awarding Rs.7,500/- for litigation expenses. This amount awarded by the court below, in my considered opinion, is a fair and reasonable one and it does not call for any interference by this Court.

In the result, the Criminal Revision Case is dismissed. The revision petitioner is directed to pay the arrears of maintenance amount within a period of three months from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

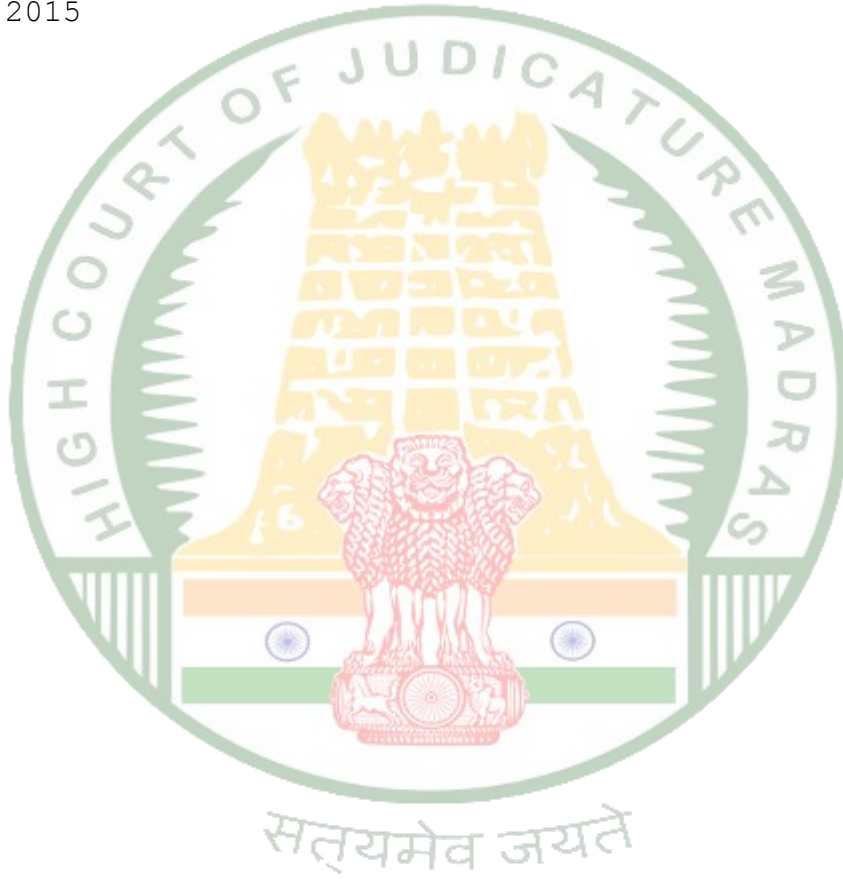
To

The Chief Judicial Magistrate
Nagapattinam

+lcc to Mr.S.Panneer selvan, Advocate sr.no.35834

Cr1.R.C. No. 893 of 2013

ctk[co]
srg 04.08.2015



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