



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2015

CORAM:

THE HONOURABLE MRS.JUSTICE S.VIMALA

Criminal Revision Case (MD)No.351 of 2015
and
M.P.(MD)Nos.1 and 2 of 2015

Murugavel

.. Petitioner

Vs.

1.Sumathi

2.Sudarsan

.. Respondents

(minor rep.by his mother and guardian 1st Respondent)

Revision is filed under Section 397 r/w 401 Cr.P.C. to call for the records and to set aside the order, dated 02.07.2015 made in CrI.M.P.No.2797 of 2003 in M.C.No.22/2003 on the file of the learned Judicial Magistrate, Sivakasi.

For Petitioner : Mr.N.Mariappan
For Respondents : No Appearance

ORDER

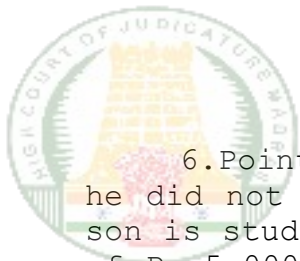
This Revision petition has been filed by the husband challenging the order of maintenance awarded at Rs.3,000/- p.m. to each of the wife and child.

2.This order is under challenge by the husband on the ground that the husband has no sufficient means to pay the sum of Rs.6,000/- to the respondents herein.

3.By the order dated 06.05.2004, the learned Magistrate had directed the husband to pay maintenance to the wife and child at the rate of each Rs.500/- p.m. The wife and child, as petitioners filed M.C.No.22 of 2003 before the learned Judicial Magistrate, Sivagangai seeking enhancement of maintenance from Rs.1,000/- to Rs.10,000/-. This application was opposed by the husband on the ground that he is after all doing a petty business, namely business in preparation of pickles and that he is earning only a sum of Rs.200/- to Rs.300/- p.m. and therefore, it is not possible for him to pay such huge amount as maintenance to the wife and child. It is further submitted that this petition itself has been filed only as a counter blast to the divorce petition filed by him.

4.It is represented by the learned counsel for the revision petitioner that the divorce petition has been dismissed. As against which, CMSA is pending before this Court.

5.The case of the husband was that the wife was running a vegetable shop at Anna market and thereby she is earning Rs.15,000/- p.m. and therefore, there is no liability on his part to pay maintenance.



6. Pointing out the evidence of the husband, where he has stated that he did not even have the information regarding the school, in which, the son is studying and also pointing out the evidence of the wife that a sum of Rs.5,000/- is paid towards annual fees, Rs.500/- towards monthly fees and Rs.150/- toward tuition fees, the Court has ordered enhancement of maintenance.

7. The Court has disbelieved the evidence of the husband that the wife is running vegetable shop in Anna Market and that she is earning Rs.15,000/- p.m. Very interesting observations are made by the Court below wherein the Court has held that even if the husband is earning meagre amount, he should enhance his capacity to earn more for maintaining his wife and child and that he cannot escape from his liability.

8. Considering the fact that the business of pickle is done in his own building, the Court has come to the conclusion atleast the income should have been Rs.15,000/- p.m. Even if this inference is not correct, it is for the husband to produce available evidence to show the exact income, as the income is within his personal knowledge. No documentary evidence has been produced to show the income of the husband.

9. Under such circumstances, the order cannot be said to be unreasonable or the amount of maintenance cannot be said to be excessive. Therefore, the order of the lower Court does not require any interference. The Criminal Revision Petition is dismissed.

10. The learned counsel for the revision petitioner would submit that having regard to the pendency of the divorce petition, the husband would be prepared to go for one time settlement. In the event of the wife accepting the one time settlement, it is open to the husband to seek modification of the order of maintenance by filing petition under Section 127 Cr.P.C. In the event of such application being filed, it is for the learned Magistrate to consider the same and to pass appropriate orders. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (Per.Admn)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Sivakasi.
2. Do Through The Chief Judicial Magistrate, Virudhunagar.

+ 1 CC TO MR.N.MARIYAPPAN, ADVOCATE IN SR NO. 56465

RJ2
TE/GSV-PM/ 19/10/2015 2P/4C