

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.Nos.63 of 2016, 33 and 1162 of 2015

Crl.R.C.No.33 of 2015

M.Nithya

W/o.P.Madheswaran

.... Petitioner/Accused

Vs.

P.Madheswaran

S/o.Late Palanisamy

... Respondent/Complainant

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, seeking enhancement of maintenance passed by learned Judicial Magistrate, Thiruchengode, in M.C.No.32 of 2012 on 12.08.2014.

Crl.R.C.No.1162 of 2015

P.Madheswaran

S/o.Palanisamy

...Petitioner/Petitioner

Vs.

M.Nithya

W/o.Madheswaran

...Respondent/Respondent

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the order of learned Judicial Magistrate, Thiruchengode, passed in C.M.P.No.781 of 2015 in M.C.No.32 of 2012 on 05.10.2015.

Crl.R.C.No.63 of 2016

P.Madheswaran

S/o.Palanisamy

... Petitioner/Accused

Vs.

M.Nithya
W/o.Madheswaran

...Respondent/Complainant

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the order of learned Judicial Magistrate, Thiruchengode, passed in M.C.No.32 of 2012 on 12.08.2014.

Appearance:

Petitioner in Crl.R.C.Nos.1162 of 2015 & 63 of 2016 and respondent in Crl.R.C.No.33 of 2015: Mrs.Shrestha for M/s.Indus Legal and Associates

Respondent in Crl.R.C.Nos.1162 of 2015 & 63 of 2016 and petitioner in Crl.R.C.No.33 of 2015: Mr.K.S.Kumar

C O M M O N O R D E R

Parties in these revisions, are husband and wife. Wife has filed M.C.No.32 of 2012 on the file of learned Judicial Magistrate, Thiruchengode, seeking maintenance. Court below, under orders dated 12.08.2014, directed payment of a sum of Rs.10,000/- towards monthly maintenance. Informing the same to be an 'ex parte order', husband has filed C.M.P.No.781 of 2015 in M.C.No.32 of 2012 seeking condonation of delay in preferring a petition against the order dated 12.08.2014, which came to be dismissed under orders dated 05.10.2015. In Crl.R.C.No.33 of 2015, wife has sought enhancement of maintenance from that granted by such Magistrate. Crl.R.C.No.63 of 2016 has been filed by husband towards setting aside the order of learned Judicial Magistrate, Thiruchengode, passed in M.C.No.32 of 2012 on 12.08.2014.

2. Heard learned counsel for petitioner and learned counsel for respondent.

3. This Court has heard both counsel on more than one occasion. It is thereafter that the husband has made good the arrears in maintenance, which counsel on either side have informed to be a sum of Rs.3,80,000/-. Today, Demand Drafts bearing Nos.488076 and 488077 dated 22.01.2016 in sums of Rs.1,90,000/- each stands handed over by learned counsel for husband to learned counsel for wife. Learned counsel for wife contended that the order passed in M.C.No.32 of 2012 on 12.08.2014 is not an ex parte order but one passed on merits. It has been the plea of learned counsel for husband that the entire proceedings before the Court below had proceeded without his having had proper knowledge thereabouts despite being vigilant

in pursuing the matter with his counsel. Without going into the merits of such submission, this Court, in the facts and circumstances of the case, particularly, where pursuant to directions of this Court the entire amount of arrears stands paid, considers it appropriate to allow CrI.R.C.No.63 of 2016 towards affording the husband an opportunity to prove his case on merits.

In the result,

(i)CrI.R.C.No.63 of 2016 shall stand allowed. The order of learned Judicial Magistrate, Thiruchengode, passed in M.C.No.32 of 2012 on 12.08.2014, shall stand set aside. The case in M.C.No.32 of 2012 shall stand remitted back to the Court below. The case shall now proceed from the stage of cross-examination of witnesses on the side of wife. Both parties are required to co-operate with the expeditious disposal of the case before the Court below which shall be concluded on or before 01.03.2016. During the pendency of the proceedings, the husband shall effect payment towards maintenance in a sum of Rs.10,000/- per month on or before 5th of every succeeding month. The Court below shall deal with the matter before it entirely upon merits. The present order has been made only towards disposal of the revisions before this Court and it is made clear that this Court has not stated anything on the merits of the case of either side.

(ii)CrI.R.C.Nos.33 of 2015 and 1162 of 2015 shall stand closed.

gm

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Judicial Magistrate, Thiruchengode.

+ 3 ccs to Mrs.Shrestha for M/s.Indus Legal and Associates,
Sr Nos.5147, 5145, 5146/16

+ 1 cc to Mr.K.S.Kumar, Advocate Sr 5664

KR/29/1/16

CrI.R.C.Nos.63 of 2016, 33 and 1162 of 2015



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