

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2016

(Orders Reserved on : 15.07.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.681 of 2016

and

Crl.M.P.No.4812 of 2016

Nancy Miriam ... Petitioner

Vs.

Mario Charles ... Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of the Code of Criminal Procedure, to call for the records in C.A.No.6 of 2015 on the file of the learned XVII Additional Judge, City Civil Court, Chennai, and set aside its order and judgment dated 08.12.2015 and thereby restore and confirm the trial Court's judgment and order dated 16.12.2014 passed by the trial Court, viz., the 23rd Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.77 of 2012.

For Petitioner : M/s.C.Uma

For Respondent : Mr.M.K.Hemkumar

ORDER

This Criminal Revision Case is directed against the order dated 08.12.2015 passed by the learned XVII Additional Judge, City Civil Court, Chennai, in C.A.No.6 of 2015.

2. The brief facts of the case are as follows:-

The respondent is the husband of the revision petitioner and their marriage took place on 21.05.2009 at Annai Velankanni Shrine, Besand Nagar, Chennai. Out of the said wedlock, the couple was blessed with a girl child on 04.10.2011 and now, the girl is in the care and custody of the revision petitioner/complainant. After the marriage, since there was a dispute arose between the parties, both the petitioner and the respondent have separated and the revision petitioner/wife has filed a complaint under Sections 18, 20, 22 and 23 of the Domestic Violence Act before the learned

XXIII Metropolitan Magistrate, Saidapet, Chennai, and the learned Magistrate, after analysing the evidence adduced on either side, finally, directed the first respondent therein/husband to pay a sum of Rs.20,000/- per month to the petitioner therein/revision petitioner and her daughter towards monthly maintenance from the date of filing of the petition to November 2014 within three months and further directed the first respondent therein/husband to pay a sum of Rs.20,000/- per month towards maintenance and medical expenses from December 2014 on or before 15th of every English calendar Month and also directed the first respondent therein/husband to return the sreehana properties and certificates relating to the petitioner/wife and her daughter. Aggrieved by the said order of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, the first respondent therein/husband had preferred an appeal before the learned XVII Additional Judge, City Civil Court, Chennai, and the appeal was numbered as CrI.A.No.6 of 2015 and the learned First Appellate Judge, after considering the entire trial Court documents and after perusing the order of the trial Court, partly allowed the said appeal and modified the order of the learned XXIII Metropolitan Magistrate and also directed the appellant/husband to pay a sum of Rs.10,000/- from the date of filing of the appeal till the disposal of appeal and further directed to pay a sum of Rs.7,500/- per month to the child, who is in the custody of the revision petitioner from the date of the said order either directly or through the bank account on or before 08th of every English Calendar month. As against the above modification order passed by the learned First Appellate Judge, the present criminal revision case is preferred by the petitioner/wife. It is admitted on the side of the revision petitioner that the respondent/husband has not preferred any revision.

3. The learned counsel for the petitioner/complainant would mainly contend that the order of the First Appellate Court is arbitrary and erroneous in law. It is further contended that the First Appellate Court has not considered the facts of the case and also failed to appreciate the arguments put forth on the side of the revision petitioner. It is also contended that the First Appellate Court is erred in giving a finding that since the revision petitioner is a working woman, she is not entitled to seek maintenance from her husband. The learned counsel also submitted that the revision petitioner is working only in a private concern and is earning only a sum of Rs.12,000/- and there is no security for her job. In view of the above circumstances, the First Appellate Court, ought to have directed the respondent/husband to pay the monthly maintenance to the revision petitioner also. The learned counsel for the revision petitioner also submitted that the respondent/husband is working as an Auditor in the Tamil Nadu Electricity Board and earning a sum of

Rs.40,000/- per month and hence, he is liable to pay maintenance to the revision petitioner and her daughter. Hence, the learned counsel for the petitioner prayed that the order passed by the First Appellate Court has to be set aside and the criminal revision case has to be allowed.

4. The learned counsel for the respondent would mainly contend that in this case, admittedly, the revision petitioner is working and earning sufficiently to maintain herself and hence, the First Appellate Court rejected the claim of the revision petitioner and directed the respondent/husband to pay the monthly maintenance to his daughter alone. There is no infirmity or illegality in the order passed by the First Appellate Court and hence, the learned counsel prayed that the order of the First Appellate Court has to be confirmed and the Criminal Revision Case has to be dismissed.

5. In this case, even in the grounds of revision, the petitioner herself had admitted that she is working in a private concern and earning a sum of Rs.12,000/- per month. But, the main argument of the learned counsel for the petitioner that at the time of filing the revision, the revision petitioner is working in a private concern and earning Rs.12,000/- per month. Hence, this Court is of the considered view that the petitioner has sufficient income to maintain herself and since the revision petitioner has sufficient income to maintain herself, this Court is of the considered view that she is not entitled to get maintenance from her husband. There is no illegality or infirmity in the order passed by the First Appellate Court in rejecting the claim of the revision petitioner.

6. In this case, admittedly, the revision petitioner has stated in the grounds of revision that the respondent has permanent job and is working as an Auditor in the Tamil Nadu Electricity Board and earning a sum of Rs.45,486/- per month and since the respondent is earning more than Rs.45,000/- per month, he has to maintain his daughter even though the daughter is in the care and custody of the revision petitioner. In this case, the First Appellate Court has not given any reason for reducing the maintenance already granted by the trial Court from Rs.10,000/- to Rs.7,500/-.

7. Hence, this Court is of the view that considering the status and income of the respondent/husband, he is directed to pay maintenance to the daughter of the revision petitioner. The respondent has obligation to maintain his daughter for her food and educational expenses. Considering the status and the monthly salary of the respondent i.e., more than Rs.45,000/-, this Court is of the considered view that the respondent/husband has to be directed to pay a sum of Rs.9,000/- per month towards maintenance to his daughter from

the date of the petition filed by the revision petitioner in M.C.No.77 of 2012. The respondent is directed to pay the entire arrears up to date within three months from the date of receipt of a copy of this order and also directed to pay a sum of Rs.9,000/- per month on or before 10th of every English calendar month.

8. In the result, the criminal revision case is partly allowed directing the respondent to pay a sum of Rs.9,000/- per month to the daughter of the revision petitioner from the date of petition in M.C.No.77 of 2012. The respondent is directed to pay the arrears up to September 2016 within three months from the date of receipt of a copy of this order and also directed to pay the monthly maintenance on or before 10th of every English Calendar month. The connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

Jrl

To

1. XVII Additional Judge,
City Civil Court, Chennai.
2. XXIII Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to M/s Hemkumar M.K., Advocate Sr.64170

Order in
Crl.R.C.No.681 of 2016

BR(CO)
RVR 15/12/2016

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