



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2016

CORAM:

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THE HONOURABLE DR. JUSTICE P.DEVADASS

Crl.R.C.(MD) No.253 of 2014

and

M.P.(MD) Nos.1 & 2 of 2014

and

Crl.R.C.(MD) No.288 of 2014

M.Sundaramoorthy ..Petitioner in Crl.R.C.(MD)No.253 of 2014 &
Respondent in Crl.R.C.(MD)No.288 of 2014

-vs-

Minor Iswaryalakshmi ..Respondent in Crl.R.C.(MD)No.253 of 2014 &
rep.by her mother and 2nd Petitioner in Crl.R.C.(MD) No.288 of 2014
natural guardian
Lathadevi

Lathadevi ..1st Petitioner in Crl.R.C.(MD)No.288 of 2014

PRAYER (Crl.R.C.(MD) No.253 of 2014): Criminal Revision Petition is filed, under Sections 397 r/w 401 Cr.P.C., to set aside the order passed in M.C.No.42 of 2010, dated 13.03.2014, on the file of the learned Family Court of Madurai.

PRAYER (Crl.R.C.(MD) No.288 of 2014): Criminal Revision Petition is filed, under Sections 397 r/w 401 Cr.P.C., to call for the records relating to the order passed by the Family Court, Madurai in M.C.No.42 of 2010, dated 13.03.2014, and set aside the same.

Crl.R.C.(MD) No.253 of 2014

For Petitioner: Mr.V.Nagendran

For Respondent: Mr.K.P.Narayanakumar

Crl.R.C.(MD) No.288 of 2014

For Petitioners : Mr.K.P.Narayanakumar

<https://hcservices.ecourt.gov.in/Res.jsp> For Respondent : Mr.V.Nagendran

C O M M O N O R D E R

As these two revisions are directed as against the very same order passed under Section 125 Cr.P.C., and the factual matrix and legal issues are intermixed, they were heard together and are being disposed of by this common order.

2. Crl.R.C.(MD) No.253 of 2014 has been filed by a father as against his daughter in granting her monthly maintenance at Rs.3,000/- in M.C.No.42 of 2010, by the learned Judge, Family Court, Madurai.

3. Crl.R.C.(MD) No.288 of 2014 has been filed by the wife as against her husband in the said Court having denied her maintenance.

4. On 10.02.2000, Lathadevi married Sundaramoorthy (See Ex.P1 Marriage Invitation). On 01.12.2000, they were blessed with a daughter (See Ex.P3 Birth Certificate). She has been christened Iswaryalakshmi. Difference of opinion arose between the spouses on account of several aspects. In the circumstances, she had gone to her parents house along with her child. The spouses started living separately.

5. In the circumstances, she sought for monthly maintenance Rs.5,000/- before the Family Court, Madurai, in M.C.No.42 of 2010 for herself (1st petitioner) and for her daughter (2nd petitioner). Their marital bondage continues. Her husband filed counter questioning her fidelity as between them there is a customary divorce, she has received Rs.1,35,000/- in full quit and they are living separately by a mutual consent and they are not entitled to maintenance from him.

6. The wife has examined herself as P.W.1 and marked Exs.P1 to P3, while her husband examined himself as R.W.1 and one Ramakrishnan as R.W.2 and marked Exs.R1 to R4.

7. Considering the submissions of both sides and the evidence on record, the learned Judge, Family Court, Madurai, ordered maintenance at the rate of Rs.3,000/- per month to the child from the date of filing the maintenance petition. However, holding that the first petitioner / mother has already received Rs.1,35,000/- and she was also silent in not taking steps for maintenance since 2001, the learned Judge has denied her maintenance.

8. As stated at the outset, aggrieved by the grant of maintenance to his daughter, her father has directed Crl.R.C.(MD) No.253 of 2014 and aggrieved by the denial of maintenance to her, the wife has filed Crl.R.C.(MD) No.288 of 2014, along with her child.



9. The learned counsel for the husband contended that under the Ex.P4, wife has already received Rs.1,35,000/- in full quit. Thereafter, they are living separately. In the circumstances, under Section 125(4) Cr.P.C., she is not entitled to maintenance.

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10. The learned counsel for the husband further contended that the paternal grandfather of the daughter since has deposited Rs.1,00,000/- in her name in a fixed deposit, the daughter is not entitled to maintenance.

11. The learned counsel for the husband further contended that in the maintenance petition, the wife and daughter have claimed Rs.5,000/-, so Rs.2,500/- each. In such circumstances, the Trial Court granting more than that, namely, Rs.3,000/- per month is not in accordance with law.

12. On the other hand, the learned counsel for the wife and daughter contended that the husband had undesirable contact with his mother's sister, who is a widow and it has been continuously stated by the wife in the proceedings. Further, she has been treated with cruelty. Under these circumstances, she came back to her parents house along with her child. Now, there cannot be a customary divorce.

13. The learned counsel for the wife and daughter further contended that Ex.R4 has not been proved in a manner known to law. In such circumstances, the contentions with reference to Section 125(4) Cr.P.C., and the alleged payment in full quit remain not proved.

14. The learned counsel for the wife and daughter further contended that the deposit of the amount by the paternal grandfather in the name of his granddaughter is out of his love and affection. That will not absolve the daughter's father from paying her maintenance.

15. The learned counsel for the wife and daughter further contended that it is true that earlier only upto Rs.500/- per month, the Court can award maintenance. However, in 2001, by way of amendment, this cap has been removed. Now, the Court can award such other amount as it deems fit in the facts and circumstances of the case.

16. In this connection, the learned counsel for the wife and daughter cited Shail Kumari Devi vs. Krishnan Bhagwan Pathak @ Kishun B.Pathak [(2008) 9 SCC 632] and Shamima Farooqui v. Shahid Khan [(2015) 5 SCC 705].



17. I have anxiously considered the rival submissions, perused the impugned order and also the entire materials on record and the decisions cited at the bar.

18. In the facts and circumstances, the question before us is whether the wife and daughter in M.C.No.42 of 2010 are entitled to maintenance from the revision petitioner in CrI.R.C.(MD) No.253 of 2014, if so how much to each and from when.

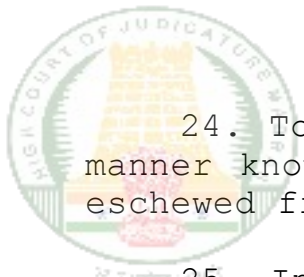
19. As usual as in most of the marriages, at the beginning, the couples used to be happy, the couples, namely, Sundaramoorthy and Lathadevi were also happy with effect from 10.02.2000. On 01.12.2000, Iswaryalakshmi brought cheers to their family. Thereafter, there was storm in their family life. The continuance of her mother-in-law's sister caused a grave concern to the wife. This has also been mentioned in her petition and also in her proof affidavit. From 2001, there was complete unrest in the family.

20. Their matrimonial discordance gone to Y.Othakadai Police. From Ex.R1, it is seen that there was persistent quarrel between the spouses. She alleged continuous torture and affairs of her husband with his mother's sister. It is also mentioned that unable to bear the beating and cruelty of her husband, she has gone back to her parents' house along with her child. That is how, she got separated and living in her parents house.

21. Ex.R4 is Divorce Settlement Deed, dated 20.08.2009. It is stated to have contained the signatures of his wife, her father and R.W.2. It is a Xerox copy. In law, it cannot operate as dissolving their marriage because it is not equivalent to the decree of divorce granted by a competent Court.

22. P.W.1 / wife has denied she having signed in Ex.R4. It has been stated by the husband that the original of Ex.R4 is with her. R.W.2 did not attend the Court for cross-examination of the wife. Though a memo has been filed by the husband because R.W.1 had threatened R.W.2, he did not attend the Court. Yet, the untested testimony of R.W.2 on the alter of cross-examination cannot be used to corroborate the version of R.W.1 / husband as to the truth and genuineness of Ex.R4.

23. With regard to her denial as to Ex.R4, the Trial Court had stated that she has not taken any steps by adducing any contra evidence to dispute the same. The onus to prove Ex.R4 is upon the husband. And, it is not on the wife. However, the Trial Court called upon her to prove the negative. Virtually, the Trial Court has put the cart before the horse. The approach of the Trial Court is not correct.



24. To prove Ex.R4, the husband has not taken any steps in a manner known to law. Thus, Ex.R4 remain unproved. It has to be eschewed from our zone of consideration.

25. In the circumstances, the contention of the husband that the wife has received Rs.1,35,000/- in full quit and they are living separately with mutual consent have all fallen to the ground. The denial of maintenance to the wife by the Trial Court on the ground that she would have received Rs.1,35,000/- also goes away.

26. Further, merely because the wife has not claimed maintenance through a Court, after their separation for a long time, she cannot be denied maintenance. She may have many reasons to do so. Further, there is no law of limitation for a woman to claim maintenance from her husband under Section 125 Cr.P.C.

27. It is not established that the wife is having independent source of income. She is unable to maintain herself. On the other hand, there is evidence to show that her husband is a man of sufficient means. Although he had stated that he has stopped his kerosene business, he did not produce any evidence to show that he has discontinued his business. Thus, the husband is having sufficient financial capacity to maintain his wife and daughter.

28. During 2012, the daughter was studying 5th standard in a private school called 'Annamalaiyar Matriculation School'. Subsequent to the passing of maintenance order, dated, 13.03.2014, on 16.09.2014, the paternal grandfather of the child deposited Rs.1,00,000/- in Fixed Deposit in Bank of India in the name of his granddaughter. Its maturity value is Rs.1,30,796.71 on 16.09.2017. Now, from that she cannot get any amount. Further, it is a deposit from her paternal grandfather out of his love and affection. This will not absolve the father of the child from his duty to provide her maintenance under Section 125 Cr.P.C.

29. Prior to the amendment made in 2001 to Section 125 Cr.P.C., the Court, can award monthly maintenance only upto Rs.500/-. Now, after the amendment, the Family Court can award maintenance "at such monthly rate as such Magistrate thinks fit". Thus, the ceiling of Rs.500/- has been removed. Now, in fixing the quantum of maintenance, the Court has to consider the financial position of both sides, mode of living of wife and children and also the increase in the price of essential commodities, expenses of basic necessities of life, such as food, clothing, shelter, health care, educational expenses.

30. Now, in this case, there is no independent source of income to maintain themselves both for the wife and daughter. Unaware of all these aspects, in a maintenance petition, the petitioner may pray a lesser amount as in the present case.



However, the Court after considering all the relevant aspects, may arrive at an higher rate than the rate mentioned in the maintenance petition. In such circumstances, it cannot be said that the Court is powerless to grant such an amount when especially judicial discretion has been conferred upon the Court.

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31. Now, in the facts and circumstances of this case, the daughter has grown up, she is a school going female child, therefore Rs.3,000/- per month besides her educational expenses ordered by the Trial Court from the date of filing the maintenance petition does not appear to be excessive.

32. Considering all the relevant aspects, the wife is to be paid Rs.4,000/- per month.

33. She is living in her parents house. Her father is not duty bound to maintain her after her marriage. It is the duty of the husband to maintain her. She has no independent source of income. She had to struggle for her sustenance and also to put up a legal battle in the maintenance case. In the facts and circumstances, the said quantum of maintenance is to be paid to her from the date of filing the maintenance petition.

34. In view of the foregoings, ordered as under:

- (i) CrI.R.C.(MD) No.253 of 2014 is dismissed.
- (ii) CrI.R.C.(MD) No.288 of 2014 is allowed.
- (iii) The impugned order, dated 13.03.2014, passed in M.C.No.42 of 2010, by the learned Judge, Family Court, Madurai, is modified to the effect that the revision petitioner in CrI.R.C.(MD) No.253 of 2014 shall pay maintenance to his wife (1st revision petitioner in CrI.R.C.(MD) No.288 of 2014) at Rs.4,000/- per month from the date of filing the maintenance petition in M.C.No.42 of 2010.
- (iv) Consequently, connected miscellaneous petitions are closed.

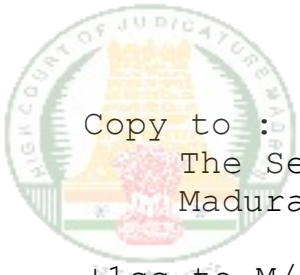
Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:
The Judge,
Family Court,
Madurai.



Copy to :
The Section Officer, ER & VR Sections,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.K.P.Narayanakumar SR.No.48835

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and
M.P.(MD) Nos.1 & 2 of 2014
and
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