

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2017

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THE HONOURABLE Dr. JUSTICE. S.VIMALA

Crl.R.C.No.1488 of 2017
and Crl.M.P.No.14818 of 2017

Gershome Christian

... Petitioner

Vs.

Geetha Christian

... Respondent

Prayer:- Revision filed under Section 397 & 401 Cr.P.C. Praying to set aside the order dated 10.10.2017 of the learned IV Additional Family Judge, Chennai, made in M.P.No.350 of 2017.

For Petitioner : M/s.N.R.Kaushik

ORDER

The husband filed a petition to set aside the ex parte order/decreed passed in M.C.No.106 of 2013 dated 29.05.2017, where under, the husband has been directed to pay a sum of Rs.30,000/- per month to the wife from the date of petition, viz., 27.02.2013 as monthly maintenance. The Court, while allowing the petition to set aside the ex parte order, has passed an order with a condition that the husband should pay 25% of the arrears of maintenance on or before 10.11.2017 and that it would be adjusted towards the final quantum of maintenance after the conclusion of the trial. Challenging the same, the

present revision has been filed by the husband.

2. The main contention of the learned counsel for the revision petitioner is that the Court has no power to pass orders of arrears and maintenance to be deposited and only the power available to the Magistrate to impose only cost.

3. In order to appreciate the contention, it is necessary to look into the provision of Section 126(ii) of Cr.P.C., which reads as follows:

126. Procedure:

(1) Proceedings under section 125 may be taken against any person in any district-

(a) where he is, or

(b) where he or his wife, resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proceed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons- cases: Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for

good cause shown on an application made within three months from the date thereof subject to such terms including terms at to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just.

3.1. A plain reading of provision of Section 126(ii) of Cr.P.C. would go to show that the power to impose the cost is the inclusive power. In other words, the power to impose cost is in addition to the power to impose any other terms and conditions.

4. Therefore, the learned Magistrate has rightly passed an order directing the husband to pay 25% of arrears of maintenance to be deposited. Therefore, the contention raised by the learned counsel for the revision petitioner is not at all acceptable.

5. The next contention is that there should be a direction for time bound disposal.

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5. It is only at the instance of the husband, the proceedings are prolonged and not at the instance of the wife. However, as per the interest of both sides, the learned Magistrate is directed to dispose of the main case, within a period of one month from the date of receipt of a copy of this order. Even though the time for complying with the conditional order of deposit has lapsed, the husband is permitted to deposit the amount on or before 22.12.2017.

6. With the above direction, the Criminal Revision Case is disposed of. Consequently, connected miscellaneous petition is closed.

04.12.2017

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Note: Issue order copy on or before 08.12.2017

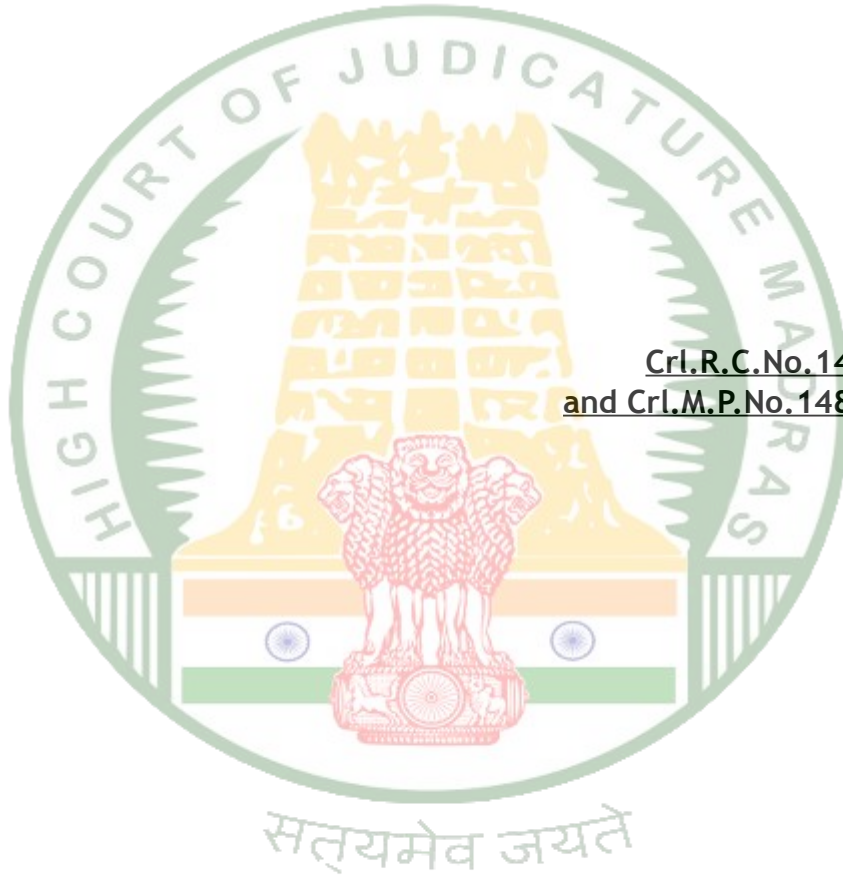
To

1. Learned IV Additional Family Judge,
Chennai.

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DR.S.VIMALA, J.

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