

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2017

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

CRL.RC.No.1639 of 2016 & CRL.M.P.No.13609 of 2016

M.P.Venkatagiri ... Petitioner

Vs.

1.Savitha Ujwalla

2.Niharikaa (Minor)

Rep. by her Mother and
Natural guardian.

... Respondents

Criminal Revision Case filed under Section 397 read with 401 of Criminal Procedure Code to set aside the order dated 11.08.2015 of the II Additional Family Court Chennai, in M.C.No.381 of 2014 and allow this petition.

For Petitioner : Mr.M.V.Krishnan

For Respondents : M/s.R.T.Shyamala for R1 & R2

WEB ORDER COPY

This revision case has been filed against the order dated 11.08.2015, passed by the II Additional Family Court, Chennai in M.C.No.381 of 2014.

2.The respondents/wife and minor child filed the said Maintenance Case before the Court below against the petitioner/husband for maintenance. The Trial Court by order dated 11.08.2015, which is impugned herein, has directed the petitioner herein to pay a sum of Rs.25,000/- per month to the first respondent/wife and Rs.15,000/- per month to the second respondent/minor child, all together 40,000/- per month towards maintenance from the date of numbering the petition viz., 20.09.2014.

3.However, the said order, even though was passed on the basis of case projected by the respondents i.e., wife and minor child, the petitioner/husband was absent as he had been called absent and set ex-parte. Therefore, an ex-parte order was passed only based on the submissions made by the respondents/wife and minor child as well as considering the case projected by them.

4.Therefore, since an ex-parte order was passed against the petitioner, whereby the Trial Court has not taken into consideration the earning capacity and other aspects on the side of the petitioner/husband and only on that ground, the present revision has been filed assailing the said order dated 11.08.2015.

5.I have heard Mr.M.V.Krishnan, learned counsel appearing for the petitioner and M/s.R.T.Shyamala, learned counsel appearing for the respondents.

6.According to M/s.R.T.Shyamala, learned counsel appearing for the respondents, as per the order of the Court below, the arrear is mounting to the extent of Rs.19,00,000/- as of now. Because of the pending of this Criminal Revision Case, the petitioner/husband did not pay a penny to the respondents/wife and minor child and because of which for the past more than three years, they are even struggling to lead their life.

7.However, Mr.M.V.Krishnan, learned counsel appearing for the petitioner would state that admittedly it is an ex-parte order and in this regard, he would submit that the lower Court, only taking into account the case projected by the wife and minor child had given a direction by allowing the maintenance case, directing the petitioner/husband to pay a huge sum towards maintenance to the respondents. If a chance is given to the petitioner/husband, he would be able to substantiate his case as the petitioner has got quarrel over the quantum of maintenance ordered by the lower Court through the impugned order.

8.Learned counsel appearing for the petitioner would also state that in order to show his bona fide, the petitioner is ready and willing to deposit a sum of Rs.15,00,000/- to the credit of M.C.No.381 of 2014 before the Court below and the petitioner also could have no objection if the said amount being withdrawn by the respondents/wife and minor child. However, the said deposit to be made by the petitioner would be without prejudice to the contention of the petitioner to put forth his case before the lower Court, once the lower Court is directed to take up the case and decide the merits of the case, after hearing both sides.

9.With regard to the said submissions made by the learned counsel appearing for the petitioner, learned counsel appearing for the respondents would state that though the respondents claimed a sum of Rs.75,000/- per month towards maintenance for wife and child of the petitioner, the Court below has only ordered a sum of Rs.40,000/- i.e. Rs.25,000/- to the wife and Rs.15,000/- to the minor child. Therefore, the said award itself is not on the higher side and therefore, even if the matter is remanded, the said quantum, which has already been fixed by the lower Court, cannot be reduced in view of the facts and circumstances of the case.

10.I have considered the said submissions made by both sides, since admittedly it is an ex-parte order, which is impugned in this criminal revision case and also in order to show the bona fide on the part of the petitioner towards paying maintenance to his wife and daughter, he has come forward to deposit a sum of Rs.15,00,000/- as admittedly the arrears as of today mounting to about Rs.19,00,000/-, the said factor can be taken into account in the given circumstances and facts of the case.

11.In view of the said position as well as the submissions made by both sides, I am inclined to pass the following order in the present revision case.

(i) The impugned order of the lower Court is set aside and the matter is remanded to the lower Court for fresh consideration.

(ii) While making fresh consideration, the lower Court shall give opportunity to both the petitioner as well as the respondents. It is made clear that once the matter is taken up for hearing at the lower Court, the petitioner shall appear before the said Court and get on with the case without showing any lame excuse and also the petitioner shall deposit a sum of Rs.15,00,000/-

(Rupees Fifteen Lakhs only) to the credit of M.C.No.381 of 2014 before the lower Court within a period of one month from the date of receipt of a copy of this order. This amount of Rs.15,00,000/- is since, within the arrears amount of Rs.19,00,000/- as approximately quantified, according to the learned counsels appearing on both sides, the said amount of Rs.15,00,000/- to be deposited by the petitioner can be withdrawn by the respondents/wife and child on filing appropriate petition before the lower Court.

12.Once the Trial Court comes to a conclusion and some amount higher or lower than the amount is fixed by the said Court, the said deposit of Rs.15,00,000/- to be made by the petitioner shall be adjusted.

13.With these observations and directions, this criminal revision case is ordered accordingly. In view of the setting aside of the impugned order, the consequential order issuing non bailable warrant against the petitioner by order dated 06.07.2016 passed by the Court below is also hereby set aside. The lower Court taking into account this fact that the parties are ready and willing to cooperate with the Court to get on with the case, it shall hear the matter and decide the same at the earliest possible time, preferably within a period of three months from the date of receipt of a copy of this order.

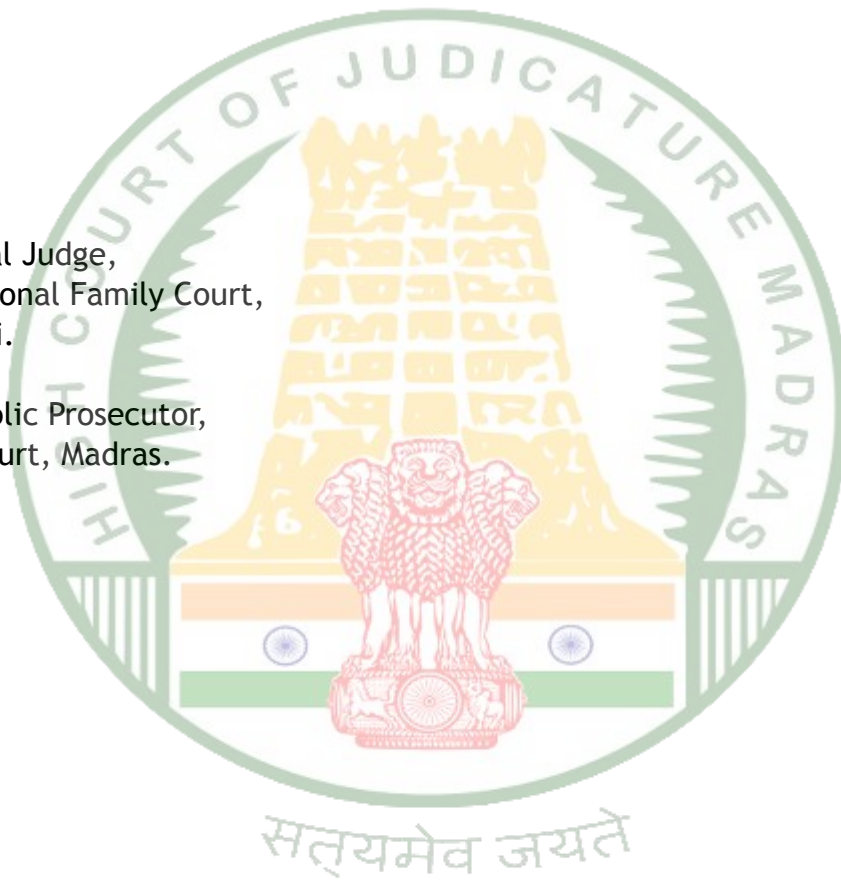
Consequently, the connected miscellaneous petition is closed.

01.09.2017

Index:Yes/No
abr

To

- 1.Principal Judge,
II Additional Family Court,
Chennai.
- 2.The Public Prosecutor,
High Court, Madras.



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R.SURESH KUMAR, J.

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